

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. [REDACTED] [REDACTED] [REDACTED] 39

THE UNITED STATES EX REL. SKINNER AND
EDDY CORPORATION, PETITIONER,

vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE
UNITED STATES

ON WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

PETITION FOR HABEAS CORPUS FILED DECEMBER 12, 1935

HABEAS CORPUS GRANTED JANUARY 12, 1936

(31,570)

TRANSCRIPT OF RECORD

Supreme Court of the United States

DOCKETED 20 1902

100-847

THE UNITED STATES OF AMERICA
vs.
JOHN D. BROWN

APPEAL FROM THE
COURT OF APPEALS FOR THE
NINTH CIRCUIT

FILED FOR RECORD
JANUARY 20 1902

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JANUARY 20 1902

CLERK OF THE SUPREME COURT

(1874, 10)

(31,570)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 847

THE UNITED STATES EX REL. SKINNER AND
EDDY CORPORATION, PETITIONER,

VS.

J. R. McCARL, COMPTROLLER GENERAL OF THE
UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia.

No. 4345.

UNITED STATES OF AMERICA *vs* Relators SKINNER AND EDDY CORPORATION, a Corp., Appellant,

vs.

J. R. McCARL, Comptroller General of the United States

a Supreme Court of the District of Columbia.

At Law.

No. 69405.

UNITED STATES OF AMERICA *vs* Relators SKINNER AND EDDY CORPORATION, a Corporation, Petitioner,

vs.

J. R. McCARL, Comptroller General of the United States, Respondent.

UNITED STATES OF AMERICA,

District of Columbia, ss.

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1. *Petition for Writ of Mandamus.*

Filed October 11, 1924.

In the Supreme Court of the District of Columbia.

At Law.

No. 69405.

UNITED STATES OF AMERICA *vs* Relators SKINNER AND EDDY CORPORATION, a Corporation, Petitioner.

vs.

J. R. McCARL, Comptroller General of the United States, Respondent.

To the Supreme Court of the District of Columbia.

The petitioner of relator respectfully shows unto the Court as follows:

1-4345a

1. That the relator, Skinner and Eddy Corporation, is a corporation organized and existing under the laws of the State of Washington, and files this petition in its own right as hereinafter set forth.

2. That the respondent, J. R. McCarl, is the Comptroller General of the United States, duly appointed and qualified, and as such has control and direction of an establishment of the United States Government known as the General Accounting Office and is sued in his official capacity.

3. That on the 28th day of December, 1920, the relator filed with the Auditor for the State and Other Departments, an Accounting Officer of the Treasury Department of the United States, a claim on its behalf against the United States in the sum of \$24,247.119 of the said claim showing credits amounting to \$6,236,142.69, leaving

a net amount due relator of \$18,010,976.71. That on September

20, 1924, relator was advised by the Comptroller General of the United States (the successor to the said Auditor and all other Accounting Officers of the Treasury Department, as hereinafter appears) that it did not appear from the records of the former office of the Auditor for the State and Other Departments that the claim of relator, submitted December 28, 1920, was received and accepted by the former Auditor as a claim against the United States, but on the contrary it appeared that the matter was regarded as a claim against the United States Shipping Board Emergency Fleet Corporation and as such was transmitted to said Fleet Corporation for proper action, all of which appears from the letter of respondent dated September 20, 1924, copy of which is attached hereto and made a part hereof, marked "Exhibit A."

4. That it is provided by the Act of Congress approved June 10, 1921, commonly known as the "Budget and Accounting Act," that all powers and duties theretofore conferred or imposed by law upon the Comptroller of the Treasury or the six Auditors of the Treasury Department should, so far as not inconsistent with said Act, be vested in and imposed upon the General Accounting Office, and be exercised without direction from any other officer.

That said Act of Congress also provides, by Section 305 thereof, as follows:

"Sec. 305. Section 251 of the Revised Statutes is amended to read as follows:

"Sec. 256. All claims and demands, whatever by the Government of the United States or against it, and all accounts, whatever in which the Government is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

5. That on the 4th day of September, 1924, the relator submitted to the General Accounting Office of the United States a claim against the United States amounting to \$2,554,387.47. Said claim was submitted to said Office by letter of transmittal dated August 22, 1924, copy of which is attached hereto and made a part hereof marked "Exhibit B" from

which it will appear that said claim was presented without any waiver on the part of relator of its claim that the contracts under which the claim arose were contracts of the United States Shipping Board Emergency Fleet Corporation and not of the United States, and this petition is presented without any waiver of relator's contention in that regard and of its right to proceed against said Fleet Corporation.

6. That by said letter of September 20, 1924, (Exhibit "A"), the Comptroller General declined to take action on the claim referred to in the last preceding paragraph hereof until after final determination of a certain suit pending in the United States District Court for the Western District of Washington, Northern Division, which said suit relator alleges is a suit filed by relator against the United States Shipping Board Emergency Fleet Corporation.

7. That it is the duty of the said respondent, the Comptroller General, by virtue of his official position as constituted by law, to consider and determine all claims lawfully submitted to said General Accounting Office as promptly and expeditiously as the facilities of his office will permit, there being no authority or discretion conferred upon him by virtue of his said office or by law to withhold action upon claims so submitted until independent litigation be-

4. Between the claimant and other parties shall have been concluded or otherwise to the prejudice of claimant's rights or interests, and the said action of the said respondent in so withholding action on relator's said claim was accordingly without authority of law, and prejudicial to relator's interests, as hereinafter set forth.

8. That the United States Shipping Board Emergency Fleet Corporation claims to have a right of action against relator by virtue of certain claims or demands, and on which the said Fleet Corporation was at all times prior to the 16th day of April, 1923, legally authorized to sue said relator in a court of law, and petitioner says that in opposition to said action, if so commenced, the relator might legally have interposed in defense thereof and as a credit or set-off thereto the said claim presented to the Comptroller General on September 4, 1924.

9. That on May 1, 1923, relator filed suit in the State Court at Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for \$9,129,491.14, exclusive of all credits or counterclaims, said suit being founded on contracts between the said Fleet Corporation and relator, and all of the items forming the total of the claim upon which suit was brought are included in the claim filed September 4, 1924, with the General Accounting Office; that said suit was removed by the Fleet Corporation to the United States District Court for the Western District of Washington, Northern Division, and is the same suit mentioned in the respondent's letter of September 20, 1924, (Exhibit "A"); that the United States Attorney for the Western District of Washington

5. appeared in said cause by direction of the Attorney General of the United States and filed a motion to dismiss the suit on the ground, among others, that the suit was a claim against the United States, and which said motion is still pending and un-

determined, that in said suit the United States Shipping Board Emergency Fleet Corporation has contended, and now contends, that the same is founded on a cause of action against the United States and not against the Fleet Corporation, for the reason that the contracts involved in said suit were executed by the Fleet Corporation solely as agent for the United States and not in its individual corporate capacity, that relator is advised, and on information and belief alleges, that the United States, in its proposed suit against relator, hereinafter referred to in paragraph numbered "10" hereof, will allege and assert said contention, and will seek to sustain and establish the same.

10. That on the said 16th day of April, 1923, the said United States Shipping Board Emergency Fleet Corporation executed an instrument in writing whereby it purported to assign to the United States "all the goods, chattels, bonds secured by mortgages, funds, notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against others persons for the payment of money, and all personal property of every kind and description whatsoever wherever the same may be situated", theretofore acquired by the said Fleet Corporation and not theretofore disposed of by it, and at that time remaining under the disposition or control of the said Fleet Corporation, that the United

States now claims by virtue of the said assignment to be the owner and holder of a claim against relator, being the same claim asserted against relator prior to the said 16th day of April, 1923, by the said Fleet Corporation, and referred to in paragraph numbered "8" of this petition, and which said claim grows out of the same contracts and transactions upon which suit is now pending, as heretofore recited in paragraph numbered "9" of this petition, and the said United States Government has declared, through its attorneys and agents, that it is now in active preparation to file suit against relator on such claim, and that such suit will be filed within the immediate future, and relator therefore alleges it to be a fact that it is the purpose of the United States to institute suit on said assigned claim within the near future.

11. That suit when filed by the United States will be filed in the United States District Court for the Western District of Washington, Northern Division, and that the Honorable Edward E. Connelley, presiding in said court, did, on the 8th day of February, 1924, in the case of United States vs. Fisher Flouring Mills Company, reported in 295 Federal Reporter, at page 691, hold that in action brought by the United States on a cause of action assigned to it by the United States Shipping Board Emergency Fleet Corporation, the defendant is not permitted, in view of the provisions of Section 971 of the United States Revised Statutes, to plead as a credit, set-off or counterclaim a claim against the said Fleet Corporation, unless the same shall have been first submitted to the Accounting Officer of the Treasury Department and acted upon.

12. That unless action is taken by the said Comptroller General of the United States on the claim of relator filed in the General Accounting Office on September 4, 1924, a

aforesaid, the relator, when suit is filed against it by the United States as contemplated, as heretofore recited, will, in view of the said decision of the said Honorable Edward E. Cushman, be subjected to the hazard of losing its right to interpose as a credit, counterclaim, or set-off to said action, the said claim filed on September 4, 1924, and relator will be irreparably damaged by reason thereof; that inasmuch as the United States has contended and still contends, in the said suit now pending against the Fleet Corporation in the said United States District Court, that relator's cause of action is solely against the United States, the United States is without lawful right through its officers charged with consideration thereof to refuse to hear and consider said claim until after said litigation is determined and relator has been compelled to defend a suit to which it would have a complete defense by way of credit, counterclaim, or set-off but for the refusal of the respondent to act in the premises.

13. That on the 25th day of September, 1924, relator, through its attorneys, addressed a letter to the respondent, copy of which is attached hereto and made a part hereof as Exhibit "C", which said letter was delivered at the office of the respondent on the 26th day of September, 1924, and from which it will be seen that said respondent was again requested to give prompt consideration to said claim, and a full explanation was made of the necessity for early consideration thereof; that respondent replied to said letter

8. By letter dated October 6, 1924, copy of which is attached hereto as Exhibit "D" and made a part hereof, from which it will appear that the respondent has again refused, and still refuses, to take action on said claim as by law he is required to do.

Wherefore, premises considered, relator prays:

1. That a writ of mandamus may issue out of this Honorable Court addressed to the respondent, J. R. McCart, Comptroller General of the United States, commanding him to consider and act upon the said claim of the relator submitted to the General Accounting Office of the United States on the 4th day of September, 1924, and that a rule be issued commanding said respondent to show cause on or before a day certain why the said writ of mandamus should not be issued for the purpose aforesaid; and

2. That relator be granted such other and further relief in the premises as may be just and meet.

SKINNER AND EDY COMPANY,
By J. BARRETT CARTER

Attorney

J. BARRETT CARTER,

GEO. V. TRIPLETT, JR.

Attorneys for Relator.

LOUIS TITUS,

C

Of Counsel

1

DISTRICT OF COLUMBIA, ss:

J. Barrett Carter, being first duly sworn, on oath deposes and says:

That he has read the foregoing petition subscribed by the Skinner and Eddy Corporation by him as attorney; that he has full authority to sign said petition; and that the facts therein stated are within his personal knowledge; that the reason this verification is made by him as attorney is that there is no officer or agent of said corporation present within the jurisdiction of this Court; that the facts stated in said petition affirm verily believes to be true.

J. BARRETT CARTER.

Subscribed and sworn to before me, This 11th day of October, 1924.
(NOTARIAL SEAL) EDITH M. STEVENS

Notary Public, D. C.

EXHIBIT "A."

Comptroller General of the United States

Washington

Sept. 20, 1924.

In re A 4889

J. Barrett Carter,

George V. Triplett, Jr.,

Attorneys for the Skinner & Eddy Corporation,

Insurance Building,

Washington, D. C.

GENTLEMEN:

Having reference to your letter of August 20, 1924, relating to the claim against the United States Shipping Board Emergency Fleet Corporation, said to have been filed in the Office of the Auditor of the State and Office Department, on or about December 28, 1920, on behalf of the Skinner & Eddy Corporation of Seattle, Washington, by Louis T. Tins, Attorney, Western Building, Washington, D. C., you are advised that it does not appear from the records of the former

Office of the Auditor for the State and Office Department now on file in this office, that the claim of the Skinner & Eddy Corporation as submitted on December, 1920, was received and accepted by the former auditor as a claim against the United States; but on the contrary, it appears that the matter was regarded as a claim against the United States Shipping Board Emergency Fleet Corporation, and as such was transmitted to said corporation for appropriate action. Correspondence concerning the merits of said claim should be addressed to the United States Shipping Board Emergency Fleet Corporation.

With respect to the claim for \$72,354.87, filed in this office on behalf of the Skinner & Eddy Corporation, September 4, 1924, to cover various items alleged to be due from the United States in the event that it is held that the contracts in question were contract

of the United States and were cancelled by the United States, or that said contracts were assigned to the United States by the United States Shipping Board Emergency Fleet Corporation, or that said corporation was acting solely as agent of the United States, you are advised that it appearing that a suit involving the subject matter of the claim as filed is now pending in the District Court for the Western District of Washington, Northern Division, no action will be taken by this office on said claim at this time, but the papers will be filed pending final action by the courts and request on behalf of claimant for consideration thereafter.

Respectfully,

(Sgd.)

J. R. McCABE,
Comptroller General

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EXHIBIT "B"

Skinner & Eddy Corporation,
White Building,
Seattle, U. S. A.

August 22, 1924.

To the General Accounting Office of the United States, Washington,

D. C.

S.

Attention: Honorable Comptroller General

Sir:

Skinner & Eddy Corporation submits herby its claim against the United States amounting to \$32,354.387.47. A statement is attached thereto showing the various items going to make up the total amount of the said claim, and these items are all supported by vouchers also filed herewith.

The several contracts mentioned or referred to in the statement of the claim were all executed in duplicate, and a duplicate original should be on file with the United States Shipping Board Emergency Fleet Corporation, and is, of course, available for your consideration in the determination of this claim.

The items "Value of Cancelled Contracts" and "Damages Breach Contract" are duplications in part, that is to say, the allowance of the latter would eliminate the former.

The Skinner & Eddy Corporation believes that the foregoing claim is a direct claim against the United States Shipping Board Emergency Fleet Corporation by reason of its belief that the contracts out of which the foregoing claim arises were contracts between the said Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation, and not contracts with the United States, but inasmuch as the United States claims that these contracts were contracts of the United States, and also claims that the cancelled contracts were cancelled by the United States, the foregoing claim is presented against the United States to apply in the event that it be

held that these contracts are contracts of the United States and/or were cancelled by the United States. The foregoing claim is also presented against the United States for the reason that claimant is informed and believes that the United States Shipping Board Emergency Fleet Corporation has assigned to the United States all its rights arising under or growing out of said contracts, in 12 which event the foregoing claim is properly against the United States as a set-off and/or counterclaim to the claim of the United States which it received by assignment from the United States Shipping Board Emergency Fleet Corporation.

The foregoing claim is also presented against the United States by reason of the claim asserted in the suit now pending between the Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation in the United States District Court for the Western District of Washington, Northern Division, that in executing the said contracts the United States Shipping Board Emergency Fleet Corporation was acting as agent of the United States, and not in its individual capacity, so that in the event it should be held that the said United States Shipping Board Emergency Fleet Corporation was acting solely as agent of the United States in making said contracts, the foregoing claim is properly a claim against the United States as a set-off or counterclaim to the claim of the United States.

This claim is presented without any waiver on the part of the Skinner & Eddy Corporation of its contention that the said contracts were contracts between the said Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation, and without any waiver of its claim that the cancelled contracts were cancelled by the United States Shipping Board Emergency Fleet Corporation, and without waiver of its claims as asserted in said suit now pending against the said United States Shipping Board Emergency Fleet Corporation.

Respectfully submitted.

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,

President.

Attest

L. B. STEDMAN,

Secretary.

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EXHIBIT "C."

Law Offices of

J. Barrett Carter, Geo. V. Triplett, Jr.,
Insurance Building, Washington, D. C.

September 25, 1924.

Honorable J. R. McCarl,
Comptroller General of the United States,
Washington, D. C.

DEAR SIR:

In re A-4889, Skinner & Eddy Corporation.

We have your letter of September 20, 1924, advising that the claim of the Skinner & Eddy Corporation filed with the Auditor for the State and Other Departments on December 28, 1920, had been transmitted to the United States Shipping Board Emergency Fleet Corporation for appropriate action, the same being considered a claim against the Fleet Corporation and not against the United States, and also advising with respect to claim for \$32,354,387.47, filed with your office on September 4, 1924, that no action will be had on said claim pending final action by the courts in the litigation now pending in the District Court for the Western District of Washington, Northern Division.

We respectfully request a reconsideration of your action in withholding consideration of the claim filed September 4, 1924, until after the litigation now pending in the District Court for the Western District of Washington, Northern Division, has been finally determined, for the following reasons:

In the suit filed by the Skinner & Eddy Corporation against the Fleet Corporation and now pending in the United States District Court for the Western District of Washington, Northern Division, the Fleet Corporation has made the contention that the suit should properly have been brought against the United States, and while we believe this contention to be unsound, the fact remains that there is a difference of opinion on the part of opposing counsel on this question which the Court must ultimately determine. However, the real difficulty is that the Fleet Corporation has made an assignment to the United States Government of an alleged claim against the Skinner & Eddy Corporation and the Government Attorneys have announced that suit will shortly be filed against the Skinner & Eddy Corporation on this assigned claim. If the claim had been asserted by the Fleet Corporation before assignment, the Skinner & Eddy Corporation could have shown credits sufficient to offset it, even assuming its validity, and since the claim has been assigned to the United States Government, obviously and in good conscience the Skinner & Eddy Corporation should not be placed in any worse position than it would be if suit were filed by the Fleet

Corporation, and should therefore be entitled to offer as against the United States any credit it could have offered against the Fleet Corporation.

However, Section 954 of the Revised Statutes provides that "in suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the Accounting Officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part."

Under this law we are advised that Judge Cushman, presiding in the District Court for the Western District of Washington, Northern Division, has held that where suit was brought by the United States on an assigned claim from the Fleet Corporation, the defendant could not offer as a credit another claim against the Fleet Corporation without the same having first been presented to the Accounting Officers of the Treasury and disallowed. Whether this is sound law we do not at this time either admit or question, but since the Court which will in the first instance hear the suit about to be filed by the United States has taken this view, the Skinner & Eddy Corporation should not be placed in the position of having to establish its right to the credits by appeal, even assuming that Judge Cushman's decision would not be sustained.

We have stated the foregoing fully and frankly in order that you may see the necessity for prompt action on the claim filed. It is our contention, however, that there is no discretion lodged in the Comptroller General to delay action upon and determination of the claim filed pending the conclusion of litigation between Skinner & Eddy Corporation and the Fleet Corporation.

We therefore respectfully request immediate consideration of the claim filed September 4, 1924.

J. BARRETT CARTER,

GEO. V. TRIPLETT, JR.

Attorneys for Skinner & Eddy Corporation

15

Copy

EXHIBIT D

Comptroller General of the United States,

Washington

Oct. 6, 1924

In re A-4839

J. Barrett Carter,

Geo. V. Triplett, Jr.,

Insurance Building

Washington, D. C.

GENTLEMEN:

I have your letter of the 25th ultimo, requesting that further consideration be given to the matter contained in letter dated September 20, 1924, wherein you were advised that no action by this

office would be taken at this time on the claim filed by you September 4, 1924, on behalf of the Skinner & Eddy Corporation of Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation, it appearing that a suit involving the subject matter of the claim is now pending in the District Court for the Western District of Washington, Northern Division. You state as the reason for your request that the United States Shipping Board Emergency Fleet Corporation has made an assignment to the United States Government of an alleged claim against the Skinner & Eddy Corporation and that the attorneys for the Government have announced their intention of shortly instituting suit on the assigned claim and that, in view of the ruling of the court in *United States v. Fisher Flouring Mills Co.*, 295 Fed. Rep. 691, on the provisions of section 951, Revised Statutes, final action on the claim by this office is desired.

Section 951, Revised Statutes prohibits, in suit brought by the United States against individuals, except under certain specified conditions, the admission, upon trial, of claims for credit except such claims as have been presented by the defendant to the accounting officers of the Government for their examination and have been disallowed either in whole or in part, and the ruling of the court in the case cited was to the effect that the defendant was not entitled, in a suit by the United States on a cause of action assigned to it by the Fleet Corporation, to plead as a set-off claims against the Fleet Corporation that have not been presented to the accounting officers as required by this section of the Revised Statutes.

The matter does not at this time appear to require action by this office under the provisions of section 951, Revised Statutes, on the claim of the Skinner & Eddy Corporation, no suit against the corporation having as yet been filed. The United States Shipping Board has been requested, however, to furnish a report on the matter and when received you will be further addressed in the matter.

Respectfully,

(Signed)

J. R. McCART,

Comptroller General.

Respondent's Answer to Petition.

Filed October 17, 1924.

• • • • •

J. R. McCart, Comptroller General of the United States, respondent herein, now and at all times saving and reserving unto himself the benefit of all manner of objections and exceptions to the errors and insufficiencies to the petition filed herein, and reserving unto himself the lack of jurisdiction of the Court appearing on the face of the petition to grant the relief prayed for, and the lack of jurisdiction of the Court to direct him as Comptroller General of the

United States to perform the act or acts in question, and relying on the same as if motion to dismiss had been specifically interposed, nevertheless answering so much and such parts of the petition and the rule to show cause as he admits it necessary for him to make answer thereto says as follows:

(1) The averments of fact contained in paragraph 1 of the petition are admitted.

(2) The averments of fact contained in paragraph 2 of the petition are admitted.

(3) The averments of fact contained in paragraph 3 of the petition are admitted by respondent except as hereinafter denied, explained and qualified.

Petitioner's claim dated December 28, 1920, submitted by petitioner to the Auditor for the State and Other Departments was accompanied by letter of transmittal, a true copy of which is hereto attached, marked Exhibit "A" and made a part hereof, which reads in part as follows:

"I submit herewith for consideration by your office claim on behalf of the Skinner & Eddy Corporation of Seattle, Washington, against the United States, amounting to \$24,247,119.31. The claim as submitted shows the United States to be entitled to credit totalling \$6,230,142.00, leaving the net amount due to Skinner & Eddy Corporation—\$18,016,976.71."

The Auditor for the State and Other Departments, on January 17, 1921, transmitted the said claim to the United States Shipping Board Emergency Fleet Corporation, and on January 19, 1921, Admiral W. S. Benson, as Chairman of the United States Shipping Board, acknowledged receipt of said claim by letter addressed to The Auditor for the State and Other Departments, a copy of which letter is hereto attached and made a part hereof and marked Exhibit "B". On June 15, 1921, the petitioner filed a suit against the United States in the Court of Claims in substantially the same amount and entering the same items as were included in the claim against the United States submitted to the Auditor for the State and Other Departments.

(4) Respondent admits that Congress passed an Act, approved June 10, 1921, designated as the "Budget and Accounting Act," which act contains the provisions quoted by petitioner in paragraph 4 of its petition.

(5) Respondent admits that the Relator submitted to the General Accounting Office on September 4, 1924, a claim against the United States amounting to \$12,354,187.47, accompanied by a letter of transmittal, of which Exhibit "B" attached to Relator's petition is a copy.

Respondent denies the conclusion of law asserted by the Relator in presenting said claim. Relator did not waive its contention that said claim was, and is, a claim against the United States Shipping Board Fleet Corporation and refers the Court to the claim and

the said letter of transmittal for its determination as to the legal effect thereof.

(6) The averments of fact contained in paragraph 6 of the petition are admitted in so far as it is alleged therein that on the 20th day of September 1924 Respondent herein as Comptroller General of the United States declined to take action on the claim of petitioner, referred to in paragraph 5 of the petition, until after final determination of a suit pending in the United States District Court for the Western District of Washington, Northern Division, wherein petitioner herein is the plaintiff and the United States Shipping Board Emergency Fleet Corporation is the defendant and which suit involves the same subject matter as is involved in the claim that was transmitted to the General Accounting Office by petitioner herein on the 4th day of September 1924 as averred in paragraph 5 of the petition, excepting that in said letter of September 20, 1924, a copy of which is attached to the petition as Exhibit "A," it is stated that papers will be filed pending final action by the
19 Courts and requests on behalf of claimant for consideration thereafter.

Respondent further avers that at no time did the General Accounting Office under the control and direction of the Comptroller General of the United States refuse to take jurisdiction of said claim submitted by petitioner against the United States to the General Accounting Office on the 4th day of September 1924.

(7) For answer to paragraph 7 of the petition, respondent admits that it is the duty of the Comptroller General of the United States by virtue of his official position as constituted by law, to consider and determine all claims lawfully submitted to the General Accounting Office of which the General Accounting Office has jurisdiction by law as promptly and expeditiously as the facilities of his office will permit, but Respondent avers that the claim submitted to the General Accounting Office by petitioner on the 4th day of September 1924 arises out of contracts and transactions between the Skinner & Eddy Corporation, petitioner herein, and the United States Shipping Board Emergency Fleet Corporation, previous to June 5, 1920, and that an act of Congress approved June 5, 1920, entitled "An Act to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation, and provide for the disposition, regulation and use of property acquired thereunder and for other purposes" confers jurisdiction upon the United States Shipping Board to adjust, settle and liquidate all claims arising out of or incident to the exercise of the
20 powers vested in the President by the Emergency Shipping Fund Provision of the Act of June 15, 1917, and subsequent amendatory acts.

Respondent denies Relator's conclusion of law that there is no authority or discretion conferred upon him by virtue of his office and by law to withhold action upon claims submitted to him until litigation involving the identical subject matter between the claimant and agents of the United States shall have been concluded.

Respondent further avers that where claims are filed with the Gen-

eral Accounting Office for determination and are pending in the United States Courts, it has been and is now the rule of the General Accounting Office to hold the determination of said claims in abeyance until the litigation shall have been concluded. Such has been the practice of the Accounting Officers of the United States for many years.

Respondent denies that the letter addressed to Relator and attached to the petition as Exhibit "A" and the action thereon taken was without authority of law and prejudicial to Relator's interest.

(8) Respondent denies any official information or knowledge sufficient to justify an opinion or belief as to the truth of the allegations of paragraph 8 of the petition.

Respondent alleges that if the claim submitted to him on September 4, 1924, is a proper set-off to the claims which Relator alleges the Emergency Fleet Corporation may have, such presumed or supposed claim by the Emergency Fleet Corporation must arise out of acts performed, or contracts made by the Fleet Corporation while acting under delegated authority from the President pursuant to the

Executive Order of July 11, 1917, delegating to said Emergency Fleet Corporation certain powers vested in the President by the Emergency Shipping Fund Provisions of the act of June 15, 1917.

Respondent further avers that by virtue of sections 2 and 4 of the Merchant Marine Act approved June 5, 1920, all property and interests of whatever kind acquired by the Emergency Fleet Corporation while acting as a delegate of the President under the powers conferred upon him by the act of June 15, 1917, were transferred to the United States Shipping Board, an independent establishment of the Government of the United States, and all contracts or agreements lawfully entered into prior to June 5, 1920, were to be assumed and carried out by the United States Shipping Board, that by reason of said act of Congress the Emergency Fleet Corporation was divested of all interest in any claims against the Relator and was, and is without legal authority to assert ownership of said claims.

(9) Respondent says that he is informed and believes that on May 1, 1923, Relator filed suit in the State Court at Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for \$9,129,401.14 exclusive of all credits or counterclaims, said suit being founded on contracts between said Fleet Corporation and Relator and all of the items forming the total of said claim upon which said suit was brought are included in the claim filed September 4, 1924, with the General Accounting Office. The said suit was removed by the Emergency Fleet Corporation to the United States District Court for the Western District of Washington, Northern Division, and is the same suit mentioned in respondent's letter of September 20, 1924 (Exhibit "A" hereto).

22 Respondent further avers that he has no official information or knowledge of the defense that is being made and that he does not either admit or deny the statements of fact contained in paragraph 9 of the petition in reference to defense that will be ma-

to said suit or to the issues that may be formed by the pleadings therein.

(10) Respondent denies any knowledge or information sufficient to form an opinion or belief as to the truth of the allegation that the United States Shipping Board Emergency Fleet Corporation executed an instrument in writing purporting to assign to the United States the property set forth in paragraph 10 of the petition as having been transferred. Respondent further avers that he has no information or knowledge sufficient to justify an admission or denial of the allegations contained in paragraph 10 of the petition in reference to any proposed suit on said assigned claim.

(11) Respondent denies that the Honorable Edward F. Cushman, United States Judge, for the Western District of Washington, Northern Division, held in the Fisher Flouring Mills case, referred to by Relator, that the cause of action therein sued upon by the United States was maintained by virtue of an assignment made to the United States by the United States Shipping Board Emergency Fleet Corporation and refers to the printed report of the decision of the Court in said case for the language employed by the Court in its decision.

(12) Respondent denies the conclusion of law asserted by the Relator in paragraph 12 of the petition that because of the decision of Judge Cushman in the Fisher Flouring Mills case the Relator will be subjected to the hazard of losing its right to interpose its credit, counter claim or set-off in any action that may be brought by the United States and denies the Relator's conclusion of law that the General Accounting Office under the control and direction of the Comptroller General of the United States is without lawful right to defer consideration of any claim until after the litigation based upon such claim shall have been concluded.

Respondent denies any knowledge or information sufficient to form a belief as to the truth of the allegation that the Relator has a complete defense to any proposed suit by the United States or that it has any defense to such claim.

(13) Respondent admits the allegations of paragraph 13 of the petition except that conclusions of law therein that he is required to either admit or allow the claim presented by Relator or to consider the same in advance of other cases that were pending before the General Accounting Office for determination at the time that Relator's claim was submitted to said office.

Respondent further avers that on the 4th day of September 1924, the same being the date on which Relator's claim was submitted to the General Accounting Office, there were pending before said General Accounting Office for determination approximately eleven thousand three hundred and sixty three cases.

Further answering the respondent says that by virtue of the provisions of the Merchant Marine Act of June 5, 1920, hereinafter referred to authority to settle, liquidate and adjust claims arising out of the exercise by and through the President of the powers and duties imposed upon the President by the act of June 15, 1917, and subsequent acts amendatory thereof, was vested in the United States Shipping Board and that the claims sub-

mitted by the Relator to the Auditor for the State and Other Departments as aforesaid and the claims submitted to this Respondent as set forth in Relator's petition were claims arising out of the exercise by and through the President of the powers and duties imposed upon him by said act.

J. R. McCARL.

JNO M. LEWIS,

*Counsel for the Comptroller
General of the United States;*

PEYTON GORDON,

*United States Attorney,
Attorneys for Respondent*

DISTRICT OF COLUMBIA, ss.

I, J. R. McCarl, having first been duly sworn on oath, depose and say:

That I have read the foregoing answer and know the content thereof, and that the matters and things therein state I verily believe to be true.

J. R. McCARL.

Sworn and subscribed to before me, this 16th day of October, 1920.
[NOTARIAL SEAL.] S. R. TULLOSS,
Notary Public.

25

EXHIBIT "A"

Louis Titus,

Westory Building, Washington, D. C.

December 28, 1920.

To the Honorable the Auditor for the State and other Departments
Washington, D. C.

SIR:

I submit herewith for consideration by your office claim on behalf of the Skinner and Eddy Corporation, of Seattle, Washington against the United States, amounting to \$24,247,119.31. The claim as submitted shows the United States to be entitled to credits totaling \$6,230,142.00, leaving the net amount due the Skinner and Eddy Corporation \$18,016,976.71.

A statement is inclosed, showing the various items going to make up the total amount of the claim, and these items are all supported by vouchers, also filed herewith.

The several contracts mentioned in the statement of the claim were all executed in duplicate, and a duplicate original should be on file with the United States Shipping Board Emergency Fleet Corporation and is of course available for your consideration in the determination of this claim.

May I ask that this claim be given your early consideration.

Respectfully,

(Signed)

LOUIS TITUS,

Attorney for Skinner and Eddy Corporation.

JBC:mlc

26

EXHIBIT "B"

January 19, 1921.

The Honorable the Auditor for State & Other Depts.,
Washington, D. C.

SIR:

Your letter of January 17, 1921, with accompanying file relating to claim of Skinner & Eddy Corporation of Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for \$18,016,976.71, is received.

This claim will receive early consideration and the determination of the Board relating thereto will be promptly transmitted to you.

Respectfully,

Chairman.

EMH:GW

Demurrer to Answer.

Filed October 23, 1924.

• • • • •

Comes now the relator, by its attorneys, and demurs generally to the answer of the respondent filed herein, and says that the said answer is bad in substance.

J. BARRETT CARTER,

GEO. V. TRIPLETT, Jr.,

Attorneys for Relator.

27

Note.

Among the points to be argued in support of the foregoing demurrer are the following:

1. Said answer is evasive and indefinite, and does not state any facts constituting a defence to the relator's petition.
2. The legal conclusions of the respondent stated in said answer are not correct or valid in law.
3. Under the admissions of said answer it appears that the respondent is under the legal duty to take the action requested by relator, and which action respondent has refused.
4. It appears by the admissions and allegations of said answer that respondent has and admits to have jurisdiction of the claim filed by relator, and nevertheless respondent has arbitrarily refused to take

action thereon or to exercise the statutory powers vested in him to allow or reject said claim.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.
Attorneys for Relator.

Hon. John M. Lewis,
Counsel for the Comptroller General of the United States
Hon. Peyton Gordon,
United States Attorney

Please take notice that the foregoing demurrer will be for hearing on Friday, the 31st day of October, 1924.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.
Attorneys for Relator.

28 Service of a copy of the foregoing demurrer accepted this 23rd day of October, 1924.

PEYTON GORDON,
By VERNON E. WEST,
Attorney for Respondent.

Order Overruling Demurrer

Filed January 7, 1925.

* * * * *

This cause came on to be heard at this term upon the demurrer of the relator, Skinner & Eddy Corporation, to the answer of the respondent, J. R. McClure, Comptroller General of the United States, and the attorney for the said respondent having stated in open court that the answer of said respondent should be considered as definitely denying that the said respondent had jurisdiction to consider the claim presented to him as alleged in the petition of said relator, and thereupon, upon consideration thereof, it is, by the court, this 9th day of January, 1925,

Ordered and adjudged that the demurrer of the relator to the answer of the said respondent be, and the same hereby is, overruled to which said ruling of the court the relator duly objects and excepts.

It is further ordered that relator shall have ten days from this date to plead to or traverse said answer if it shall be so advised.

WENDELL P. STAFFORD
Justice.

29 *Plea and Traverse of Relator to Answer of Respondent*

Filed January 9, 1925.

Comes now the relator, Skinner & Eddy Corporation, and without waiving its demurrer to the answer of respondent filed herein, for a plea and traverse to said answer says:

1. Relator, Skinner & Eddy Corporation, traverses and denies in manner and form as alleged each and every averment of fact in said answer, save in so far as said averments admit the allegations of relator's petition or are hereinafter specifically pleaded to.

2. For a plea to that part of paragraph three of said answer wherein it is alleged,

"On June 15, 1921, the petitioner filed suit against the United States in the Court of Claims in substantially the same amount and covering the same items as were included in the claim against the United States, submitted to the Auditor for the State and Other Departments."

relator says, that said suit was voluntarily dismissed without prejudice on motion of relator on April 4, 1923, which said order of dismissal was subsequently set aside by the Court of Claims, but on mandamus from the Supreme Court of the United States (In re Skinner & Eddy Corporation, 265 U. S. 80) was restored on the 16th day of May, 1924, and said suit was dismissed, so that said suit is not now pending and was not pending on the 4th day of September, 1924, and has never been decided on its merits.

3. For a plea to that part of paragraph thirteen of said answer wherein it is alleged,

"Further answering the respondent says that by virtue of the provisions of the Merchant Marine Act of June 5, 1920, hereinafter referred to authority to settle, liquidate and adjust claims arising out of the exercise by and through the President of the powers and duties imposed upon the President by the act of June 15, 1917, and subsequent acts amendatory thereof, was vested in the United States Shipping Board and that the claims submitted by the Relator to the Auditor for the State and Other Departments as aforesaid and the claims submitted to this Respondent as set forth in Relator's petition were claims arising out of the exercise by and through the President of the powers and duties imposed upon him by said act."

relator says that the claims presented by relator to the Auditor for the State and Other Departments on December 28, 1920, and the claims presented by relator to respondent on September 4, 1924, did not arise out of the exercise by and through the President of the

powers and duties imposed upon the President by the Act of June 15, 1917, and subsequent acts amendatory thereof, or any of said acts; that said claims are for moneys due and payable to the relator growing out of certain transactions between the relator and the United States Shipping Board Emergency Fleet Corporation, as will hereinafter more fully appear. Attached hereto as Exhibits "E.1" to "E.4" inclusive, and Exhibits "E.6" to "E.10," inclusive, are copies of certain contracts entered into between the relator and said Fleet Corporation for the construction by relator of certain steam cargo-carrying vessels. Exhibit "E.5" is a written proposal dated May 1, 1918, from the said Fleet Corporation to the relator, which was duly accepted by the relator and therefore became a contract between the relator and said Fleet Corporation, and said Exhibits "E.6" and "E.7" are copies of the contracts entered into in pursuance of said proposal of May 1, 1918. Exhibit "E" is a copy of the lease entered

31 into in pursuance of said letter of May 11, 1918, to carry out the terms thereof relative to the lease and sale to relator of the real estate and property mentioned in said letter. Exhibits "G.1" to "G.8," inclusive, are orders given by the said Fleet Corporation to the relator for repair work on ships under the control of the said Fleet Corporation. Exhibit "H" is a general order issued by the Fleet Corporation directing the District officers of said Fleet Corporation to reimburse shipbuilders for the increased labor cost of payment off employees on the shipbuilders' time. Exhibit "K.1" is a telegram from the said Fleet Corporation to relator, directing relator to suspend all work upon twenty-five of the vessels which relator had agreed to construct for the said Fleet Corporation under the contract of June 1, 1918 (Exhibit "E.7"), and July 18, 1918 (Exhibit "E.9"), and Exhibit "K.2" is a letter from the Vice-President of the United States Shipping Board Emergency Fleet Corporation to the relator cancelling said contract of June 1, 1918, to the extent of thirteen vessels agreed to be constructed thereunder, and cancelling said contract of July 18, 1918, in its entirety.

That all of said exhibits are hereby made a part hereof as incorporated herein.

That the claim presented by relator to the respondent on September 4, 1924, as alleged in the original petition filed herein, made up of the following items, all arising out of or by reason of the contracts and other exhibits heretofore referred to, namely:

\$697,500.00 of said claim is for payments due the relator (a) contract price for ships completed and delivered by

32 relator to the said Fleet Corporation under said contracts of May 27, 1918 (Exhibit "E.6"), and June 1, 1918 (Exhibit "E.7"), and the contracts amendatory and supplemental thereto (Exhibits "E.8" and "E.10");

\$1,795,600.00 of said claim is for bonuses or premiums due relator in accordance with the terms of said contracts for completing and delivering certain vessels before the delivery dates fixed in said contracts;

\$436,916.47 of said claim is for overtime payments required to be made by relator under the express written instructions of the s

Fleet Corporation for work done in the performance of said contracts, on national holidays, Saturday afternoons and at night.

\$77,347.65 of said claim is for the additional expense involved in paying off employees on relator's time as required by General Order No. 18 of said Fleet Corporation (Exhibit "H").

\$1,605,060.22 of said claim is for investment in the property agreed to be bought by relator from said Fleet Corporation under the contract of May 11, 1918 (Exhibit "E.5"), relator having entered into possession of said property under said contract and the lease entered into in pursuance thereof (Exhibit "F"), and having expended thereon the said sum in betterments and improvements, was later, on March 22, 1919, and after said contracts had been cancelled (see Exhibit "K.2"), forcibly dispossessed by the said Fleet Corporation and prevented from carrying out the contract to purchase the same.

\$160,277.42 of said claim is for taxes and other carrying charges paid by relator on the property agreed to be purchased under said contract of May 11, 1918.

\$514,441.40 of said claim is for money paid to said Fleet Corporation by relator in accordance with the terms of said contract of May 11, 1918, and the lease entered into in pursuance thereof, all of which was lost to relator after said contracts were cancelled and relator was dispossessed from said property and prevented from completing its contract of purchase.

\$2,079,452.35 of said claim is for loss on materials purchased by relator to be used on the vessels, the construction of which was prevented by the cancellation of said contracts by the letter of April 25, 1919 (Exhibit "K.2").

\$626,077.52 of said claim is for materials taken over by the United States Shipping Board Emergency Fleet Corporation. This material was a portion of the stock on hand to be used in the construction of the vessels, the construction of which was prevented by the cancellation of said contracts, and which was taken over by the said Fleet Corporation after said contracts were cancelled, and for which it agreed to pay the relator the amount for which claim is made.

\$332,011.42 of said claim is for moneys advanced by the relator to subcontractors, which was lost to relator by reason of the cancellation of said contracts.

\$342,754.45 of said claim is for loss sustained by relator by reason of a strike covering the period January 21, 1919, to March 17, 1919, a period of fifty five days, which said strike was caused and its immediate settlement prevented by the acts of the said Fleet Corporation.

\$11,905.20 of said claim is for increased freight rates on materials to be used in the performance of said contracts, for which the relator was entitled to be reimbursed under the provisions of said contracts.

\$45,565.45 of said claim is for extra work on, and additional costs caused by changes in the designs of, the vessels constructed by relator for said Fleet Corporation.

\$68,894.54 of said claim is for repairs made on vessels under control of said Fleet Corporation in accordance with the written instructions of the said Fleet Corporation, said written instructions being Exhibits "G-1" to "G-8", inclusive.

\$2,793,175.83 of said claim is for loss in plant, machinery, equipment, etc., occasioned the relator by the cancellation of said contracts.

\$6,000,000.00 of said claim is for the value of the cancelled contracts; and

\$14,431,810.50 of said claim is for damages for breach of said contract.

The last two items being duplications in part, the allowance of the latter would eliminate the former.

That the claims presented to the Auditor for the State and Other Departments on December 28, 1920, grew out of the same contracts and transactions and is practically for the same items as the claim presented to the Comptroller on September 4, 1924.

SKINNER & EDDY CORPORATION.

By J. BARRETT CARTER,

Attorney.

J. BARRETT CARTER,

GEO. V. TRIPLETT, JR.

Attorneys for Relator.

LOUIS TITUS,

C. Of Counsel.

35 DISTRICT OF COLUMBIA ss

J. Barrett Carter, being first duly sworn, on oath deposes and says: That he has read the foregoing traverse and plea to the answer of the respondent, which said traverse and plea is subscribed by the Skinner & Eddy Corporation, by affiant as its attorney; that he has full authority to sign the same, and that the facts therein stated are within his personal knowledge; that the reason this verification is made by him as attorney is that there is no officer or agent of said corporation present within the jurisdiction of this court; that affiant verily believes the facts stated in said pleading to be true.

J. BARRETT CARTER,

Subscribed and sworn to before me, This 29th day of January, 1925.

[NOTARIAL SEAL.]

SINAI THOMAS,

Notary Public, D. C.

36

RELATORS' EXHIBIT E-1

United States Shipping Board,
Emergency Fleet Corporation,
Washington.

May 28, 1917.

Skinner & Eddy Corporation,
Smith Building,
Seattle, Washington.

GENTLEMEN:

Our construction of Paragraph XI of the contract for six steel cargo-carrying steamers made with you this day is that the Contractor must at all times pay at least the Navy Yard wages for same service. The contract establishes a minimum wage on the work; and gives the Owner the right to give the Contractor instructions which will prevent the Contractor, by the use of high wages, from robbing other yards. The owner has no desire under the contract to keep down the Contractor's wages, but the Owner must retain full control over the labor situation and cannot and will not give any assurances that it will not press the labor clause, and this letter is merely to be taken as our construction of the labor clause.

Very truly yours,

GEO. W. GOETHALS,
General Manager.

GHS MAW.

Accepted

SKINNER AND EDDY CORPORATION,
By LOUIS TITUS,
Att'y-in-fact.

37 Contract (Lump-Sum Basis) for Completed Steamers—
Pacific Coast

Contract made this 28th day of May, 1917, between the Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part (herein called the Owner).

For valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual agreement of the parties, it is agreed as follows:

1. The contractor hereby agrees to construct, at its own risk and expense, in accordance with drawings and specifications hereto attached, and made a part of this contract, under the Rules and Regulations of the British Lloyd's to class 100 A1 for ocean-going vessels (or, if the Owner shall by writing so require, of the American

Bureau of Shipping), six steel cargo-carrying steamers. Attached hereto marked Schedule "A" and likewise to be approved by Theodore E. Ferris, is a partial statement of the specifications. The Contractor agrees to deliver said steamers complete with propelling machinery, auxiliaries, and equipment, according to the said drawings and specifications, to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

The first two steamers to be delivered within five months from the date of arrival of the keel plates, and of the remaining number of steamers, the building of the second two steamers shall be commenced immediately after the completion of the first two steamers and shall be delivered within five months after the laying of the keels, and the building of the remaining two steamers shall be commenced immediately after the completion of the second two steamers and shall be delivered within five months after the laying of the keels.

11. In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum of \$1,400,000.00 for each of such completed steamers. Such purchase price shall be paid in the manner hereinafter stated.

The Owner agrees to cause to be furnished at the Contractor's works certain steel material, which shall be ordered by the Contractor, at special prices arranged by the owner (freight to Contractor's yard to be paid by the Contractor) in amounts and on dates substantially as shown in Schedule "B" hereto attached which is made a part hereof. Such steel shall be ordered by the Contractor for the Owner's account and payments therefor at the prices shown in Schedule "B" shall be made by the Owner direct to the concerns furnishing such steel. All payments so made shall be deemed payments on account of the purchase price above stated. For the purpose of computing the amounts to be paid by the Owner direct to the Contractor the cost of such steel is figured approximately at \$328,000 for each steamer. The balance of the purchase price is to be paid direct to the Contractor as follows: (a) \$500,000 within 30 days after signing this contract; (b) twenty per cent of the contract price of each steamer when the keel thereof is laid; (c) twenty per cent of the contract price of each steamer when said steamer is completely framed; (d) twenty per cent of the contract price of each steamer when said steamer is plated; (e) ten per cent of the contract price of each steamer when said steamer is successfully launched; (f) five per cent of the contract price of each steamer when its machinery is installed; (g) five per cent of the contract price of each steamer when said steamer has passed successful trial; (h) the balance of the contract price of each steamer within thirty days (30) after delivery to and acceptance thereof by the Owner.

In computing the percentages thus to be paid of the purchase price of each steamer under sub-divisions (b) to (g) inclusive, the purchase price shall be deemed to be the total purchase price minus the estimated cost of steel to be supplied by the Owner as above stated.

39. Provided that as to all the above installment payments, after said first payment described in (a) above no payment shall be deemed to be due at the time fixed unless the amount of said installment in addition to any theretofore paid and the proportion of the first payment is fairly *represented* in the progress of the work of construction on such steamer together with the value of materials assembled at the Contractor's yard and such fact is certified to by Owner's inspector.

It is understood that the Contractor in agreeing to the purchase price hereunder have estimated that the labor on each of said steamers will cost the Contractor \$325,000 which is an increase of 25% over the recent cost of labor on a similar vessel, and that the engines, boilers (the boiler plates being figured at 6½¢ per lb.) and all fittings and auxiliaries, including everything entering into the construction of said steamers in addition to the shapes and plates (other than boiler plates) will cost the Contractor, delivered at the Contractor's plant, \$460,000, so that the labor and all material other than shapes and plates are estimated to cost the Contractor in the aggregate \$791,000.

Should the contractor be able to make any saving on the aggregate of these two items so that the cost is less than \$791,000 for each of said vessels then the Owner shall have the benefit of said saving and the amount of said saving shall be deducted from the purchase price and allowance therefore shall be made in the last installment payment hereunder.

It is further understood that the last four steamers to be constructed hereunder shall be constructed on the same terms and for the same price as the first two steamers provided, however, that if any material required to be furnished by the Contractor entering into the construction of any of said last four steamers is advanced in price or if the labor necessary for the construction of any of said last four steamers costs more than the estimate cost of labor, as hereinbefore stated, then such additional cost in material and or labor shall be added to the purchase price of said steamer.

40. Before final acceptance by the Owner, the Owner may make, at Contractor's expense, a dock trial of not exceeding six hours, or a sea trial at some point convenient to Contractor's yard of not exceeding four hours, which shall be to the satisfaction of the Owner.

No inspector's certificate given or payment made under the terms of this contract (except on final payment, shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work, or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and all workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by

such inspectors before the same are worked or put into construction, if opportunity so to do is afforded by the Contractor. Said inspectors shall also have the right of rejection after material is worked or put into construction if facilities are not given for inspection prior thereto.

III. The Owner shall have the right, but only by orders in writing, to substitute turbine engines for reciprocating engines, except in the first two steamers to be delivered, which shall have reciprocating engines, and to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the steamer as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect upon proper compensation or allowance being agreed therefor, as though such

alterations, omissions, additions or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VII hereof. If the contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fire, lightning, earthquake, flood, riot, insurrection or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, said steamers and all materials and supplies for and to be used in construction under this contract, against any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and risks of launching during such construction and until final completion and delivery. Such insurance

42 to be in the usual form and to cover the interest of the Owner for an amount not less than the amounts of the installments of payment, which, from time to time, have been made, provided, that the amount of insurance required shall not exceed at any time, the amount available in the insurance market.

V. It is agreed that if the Contractor shall materially fail to

carry out the provisions of this contract and shall continue in default for a period of sixty days after notice thereof from the Owner, or its inspectors, or if the Contractor shall fail to make progress on the work satisfactory to the Owner, then the Owner shall have the power and right to enter into and take possession of said steamers and all materials and appliances in connection therewith, and in a reasonable and economical manner, for account of the Contractor, to complete the work called for in this contract at the yards of the Contractor or otherwise. After taking over the work in this manner, the Owner shall pay the Contractor on account of profit only a reasonable rent for the Contractor's yard and facilities used.

Provided, however, that if the Contractor can show to the satisfaction of the general manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which he had no control, the Contractor shall be allowed such opportunity as the general manager of the Owner may deem reasonable to complete the work within the time prescribed by this contract.

VI. It is agreed that as the payments, provided for herein, are made by the Owner on account of materials ordered by or assembled or set up in the yard of the Contractor or used in the construction hereunder, the same to the extent of the payments made shall become the property of the Owner. This change of title, however, shall not be construed as a waiver by the Owner of its right to object if the terms of this contract have not been complied with, nor construed as acceptance of any work which fails to fulfill the requirements of this contract.

VII. In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by George W. Goodhals, the general manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed steamer to the owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the general manager, as to any disputed matter hereunder of any kind, and shall give notice to the Owner to that effect within thirty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and one by the American Bureau of Shipping. Such board shall, within thirty days after submission of such matter to it, determine what, if any, further sum shall be due by the Owner to the Contractor hereunder on account of such delivered steamer, and its finding (made by a majority of the board) shall be conclusive on both parties.

44 VIII. It is agreed by both parties that time is of the essence of this contract. The Contractor agrees to commence and carry through to completion the work under this contract with dispatch, and that it will not enter into any other contract or undertake any other work or service at its yards which will interfere in any material manner with the completion of the work undertaken hereunder.

IX. The contractor agrees to deliver the steamers to the Owner free from any lien or incumbrance. In the event of the filing of any lien or incumbrance against said steamers before final payment or account of any person, firm, or corporation furnishing labor or materials for said construction under this contract the owner may satisfy the same out of any amount not paid to the Contractor hereunder, or the Owner may, at its option, withhold the amount thereof from any installment payment thereafter becoming due hereunder.

X. The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees or workmen on or about the work covered by this contract, and indemnify the owner against the same. The contractor shall be responsible for all claims of any kind made against the owner for any infringements of patents or patent rights and for the use of any patented articles and shall defend and save harmless and indemnify the owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents,

patent rights, or of the use of any patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles, at the time when such claim is made, and will promptly notify the Contractor of any suit or suit brought against it therefor and give the Contractor an opportunity to defend same, and provided that no payment shall be made by the owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation and provided that the contractor shall not be liable in the event the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent be known to the parties hereto.

XI. Until and unless otherwise instructed by the Owner, the Contractor shall pay for all labor under this contract a scale of wages equal to the scale of wages paid for the same service in the United States naval shipyard nearest to the Contractor's yard, and the Contractor shall from time to time change such scale as the scale may be changed by such naval shipyard. No strikes on the part of labor employed by the Contractor under this contract and no lockout against labor by the Contractor under this contract will be permitted. All disputes involving the relation of the Contractor to labor employed under this contract must be submitted for decision in writing to the conciliation service of the United States Department of Labor. Such submission in writing shall be by a committee of three selected for the Contractor's yard in such manner as the Owner may direct.

The Contractor will comply with all instructions as to wages and conditions of employment of labor on this contract given to it in

writing by the Owner. If by reason of any such instruction or increase of naval shipyard scale after this contract is executed, the cost

46 of any steamer hereunder shall be increased, then the sums to be paid by the Owner to the Contractor as herein provided for such steamer shall be increased by such amount. Such amount shall be agreed upon by the parties, and, if not agreed upon, shall be determined as provided in Article VII hereof.

XII. This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

XIII. Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Smith Building, Seattle, Washington.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL]

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By WM. DENMAN,

President

SKINNER & EDDY CORPORATION,

By LOUIS TITUS,

Atty. in Fact

Attest

[SEAL]

GERARD C. HENDERSON,

Secretary

Attest

47

SCHEDULE "A"

Partial Statement of Specifications.

This Schedule must be approved by Theodore E. Ferris.

The steamers shall be of the Robert Dollar type which shall be duplicates of the Hanna Nielsen, a vessel heretofore constructed by the Contractor except as hereinafter or in the drawings and specifications specifically stated.

- (1) Dead weight capacity 8,800 tons.
- (2) Length over all 423' 9"
- (3) Length between perpendiculars Lloyd's length 410' 5½"
- (4) Beam, moulded 54' 0"
- (5) Depth, moulded 29' 9"
- (6) Draft loaded 24' 2"
- (7) Deadweight capacity at 24' 2" draft, about 8,800 tons.
- (8) Cubic capacity, grain, about 490,000 cubic feet.

- (10) Calculated gross tonnage, about (American measurements) 5,730 tons.
- (11) Calculated net tonnage, about (American measurements) 3,880 tons.
- (12) Fresh water tanks capacity 200 tons.
- (13) Coal bunker capacity (permanent) 420 tons.
- (14) Coal bunker coal or cargo including permanent coal bunker capacity 1,230 tons.
- (15) Speed on trial 11½ knots.
- (16) Shaft horsepower 2,500.
- (17) Steaming radius 10,000 miles.

NOTE.—All tons are taken at two thousand two hundred and forty pounds per ton.

(18) Steamers shall have reciprocating engines, forced draft and steam shall be supplied by three Scotch boilers 14' 9" diameter by 11' 2" long, fitted with superheat, and arranged for coal. Working pressure 190 lbs. per sq. in.

(19) Single screw, steel, cargo, tween deck steamship ready for service, including full equipment for going to sea as per specifications. Every care shall be taken to produce and use good materials and reliable workmanship throughout.

Approved

THEO. E. FERRIS

June 2, 17

(SCHEDULE "B")

Prices of Steel, Pittsburgh Deliveries.

Plates 4½¢ per lb.

Shapes, flats and rods (for rivets) 3½¢ per lb.

Marine plates for boilers 6½¢ per lb.

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RELATIONS EXHIBIT E-2

Supplemental Agreement, Contract No. S. C. 10, Skinner & Eddy Corporation

This supplemental agreement, made this 16th day of February, 1918, by and between the Skinner & Eddy Corporation, a corporation organized under the laws of the state of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part (herein called the Owner), witnesseth that

Whereas, on May 28, 1917, the parties hereto entered into a certain contract for the construction by the Contractor of six (6) steel cargo-carrying steamers complete, copy of which contract is hereto attached, to be hereinafter mentioned as the original contract, and

Whereas, the Contractor has represented to the Owner and the Owner believes that the practice and detail incident to the plan of cost accounting necessitated by the terms of the original contract are delaying the construction of said vessels for the Owner, and the parties therefore desire that the terms and conditions of said original contract applying to the consideration to be paid by the Owner to the Contractor for the construction and delivery of said steamers be changed, and

Whereas, under the original contract certain quantities of steel have been furnished by the Owner to the Contractor for the construction of said steamers, the construction of four of said steamers is under way and certain part payments of the consideration under the terms of the original contract have already been made to the Contractor, and

Whereas, since the execution of the original contract there have been issued from time to time by the Chief of Naval Operations of the Navy Department instructions for the fitting out of vessels for armed guard, which said instructions are fully set forth in the circular letter from the Chief of Naval Operations to various commandants and bureaus, dated December 27, 1917, copy of which said letter is hereto attached and made a part hereof, said requirements in said letter (in order to correspond with reference made to them in another contract between the parties hereto) being hereinafter referred to as "military requirements," and including bulkheads, gun foundations, magazines, lookouts, additional lifeboats, life rafts and equipment therefor, changes in masts and rigging, as now designed, combination oil and/or coal burning equipment, watertight frames, watertight doors, and other changes, accommodations, installations, equipment and structures of various kinds and descriptions; and

Whereas, part of said military requirements have, in accordance with instructions issued from time to time by the Owner, been heretofore installed in certain of the said steamers now under construction, and the Owner desires all of said requirements to be incorporated in said six steamers in so far as such incorporation can be effected without materially delaying their completion; and

Whereas, the Contractor is ready and willing, in consideration of changes now to be made in the amount of the consideration for said six steamers, and the form and manner of its payment, as provided in the original contract, to enter into the undertakings hereinafter specified

Now, therefore, in consideration of the premises, and of the mutual undertakings of the parties hereto, it is agreed as follows:

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1. The Contractor will furnish all labor and materials necessary for the construction of, and will fully construct and install, each and all of such military requirements, or parts thereof, in each and all of said six steamers, subject to the following exceptions and conditions, namely:

On account of the stage of construction of the first three said steamers reached on this date, those of such military requirements only will be constructed and or installed by the Contractor as may be specially required from time to time by the District Officer. As to the last three steamers under said original contract, all such military requirements will be constructed and or installed excepting such only as the District Officer shall expressly in writing direct the Contractor not to construct and or install. No labor or materials furnished in connection with such military requirements heretofore made under orders of the Owner, or which may hereafter be furnished by the Contractor, whether with or without such direction from the Owner, to comply with said military requirements or any of them, shall constitute extra work, alterations, additions or substitutions under Article III, Article VII or any other part of the original contract or of the within supplemental agreement, so as to be made, nor shall they in any other manner be made, the basis for compensation in addition to the lump sum consideration agreed to herein. Where the terms of said letter of said Chief of Naval Operations are not deemed by the Owner to be a sufficient guide to the Contractor, the Owner will furnish to the Contractor plans and specifications covering such military requirements, otherwise the Contractor will construct and or install such requirements without such plans and or specifications of the Owner.

2. Any orders heretofore issued by the Owner for alterations, omissions, additions or substitutions and which may have increased, or which may increase, the cost of construction of said steamers or any of them, will not constitute a basis for additional compensation beyond the new consideration to be stated in Article II hereof.

3. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with such military requirements as have already been furnished and installed, and as shall be called for under the provisions of this contract, to the Owner, afloat at the works of the Contractor Seattle, as follows:

Hull 83—January 10th, 1918

Hull 84—February 4th, 1918

Hull 85—June 10th, 1918

Hull 86—July 4th, 1918

Hull 87—November 10th, 1918

Hull 88—December 4th, 1918

II

1. In consideration of the construction by the Contractor of six steamers under the original contract, as amended by the within supplemental agreement, the Owner will pay the lump sum consideration of One Million Four Hundred and Seventy-five Thousand Dollars (\$1,475,000) for each of the said six steamers.

2. Payments heretofore made by the owner under the original contract will be credited upon said revised consideration, subject to credits on account of steel furnished or to be furnished under Art

11 of the original contract, and on account of such part payments as have already been made under the original contract, the purchase price is to be paid upon the basis of the following plan (interest being excluded in the accounting adjustments incident to the adoption of the plan of payments now provided):

(a) Ten per cent (10%) of the contract price of all of said steamers upon signing the original contract;

(b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid;

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place;

52 (d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place;

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place;

(f) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place and stem and stern posts are up;

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place;

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place;

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked;

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched;

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed;

(l) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

It is further understood and agreed that if the cost of freight on materials necessary for the construction of these vessels is advanced over the present freight rate, that such additional cost of freight shall be added to the purchase price.

3. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and

53 the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge the propeller, will make a speed of eleven and one-half (11½) miles over this measured course.

Inspector's Certificate.—4. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the Inspectors ap-

pointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction and to accept such materials and or workmanship as are in conformity with specifications and promptly to reject all materials and or workmanship which do not comply with the specifications; such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

5. It is agreed that the wages paid by the Contractor shall not exceed those paid by the shipyards in the Seattle District for similar work. The Owner agrees that in the event that the wage-schedule in the Seattle District should be increased by its written direction over the scale fixed by the Federal Adjustment Wage Board on November 3, 1917, together with the ten percent bonus therein effective as of December 13, 1917, and becoming permanent on February 1, 1918, that such increase will be borne by the Owner, otherwise it will be borne by the Contractor.

The Contractor agrees that it will comply at all times with all instructions as to wages, hours, or other conditions of labor issued by the Owner and applying to yards in the Seattle District.

If Sunday, holiday or overtime work be resorted to, it shall
54 be without additional cost to the Owner, unless specifically ordered by the Owner.

Inspectors and Auditors.—6. The Owner's inspectors or other duly authorized representatives shall have full and free access to the works of the contractor and to all work and material in connection with the construction of the vessels hereunder.

III

There are now deemed to be stricken from the original contract the following provisions thereof:

1. From Article I. The paragraph beginning with the words, "The first two steamers" and concluding with the words, "of the keels."

2. From Article II. The passage beginning in the second paragraph with the words, "The balance of the purchase price" and concluding with the words, "inspection prior thereto," at the end of said article.

3. All of Articles III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII of the original contract.

IV

Alterations.—1. The Owner shall have the right, but only by order in writing, to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect upon proper con-

55 compensation or allowance being agreed therefor, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason of any such order issued after this date, the cost of the construction hereunder shall be increased, then

the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions of the price thereof, the dispute shall be determined as provided by Article VII hereof.

Delay.—2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of Contractor to receive material or machinery for any cause beyond the contractor's reasonable control (it being understood, however, that in all sub-contracts due care will be exercised in the selection of competent and reliable sub-contractors, and all proper precaution taken to insure, so far as practicable, the faithful performance of any sub-contract as may be made) or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed, and provided further that the Owner

56 may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

Insurance.—3. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, lightning, settling and staging, breakage of ways, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner, such insurance to be in the usual form and to be payable to the Owner and the Contractor as their

interests may appear, and for an amount not less than the amounts of the instalments of payment, which, from time to time have been made; Provided, that the amount of insurance required shall not exceed, at any time, the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance and reducing the contract price by an amount corresponding to the cost of said insurance.

V.

Forfeiture.—The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress (unless caused by circumstances beyond its control), the Owner may declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The owner shall thereupon cause to be taken and filed with the United States Shipping Board

57 a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, That if the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

VI.

Title.—It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and or materials.

VII.

Disputes.—In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the

meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing

58 the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, addition, or substitutions or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the General Manager, as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within thirty days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VIII.

Time of Essence.—It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will

59 interfere in any material manner with the completion of the work undertaken hereunder.

Fines and Liquidated Damages.—Should the Contractor succeed in delivering any of said vessels to the Owner complete before the dates above provided, the Owner agrees to pay, as premium for advanced delivery for each completed vessel so delivered, the sum of Three Hundred Dollars (\$300.00) per day for each and every day gained by such advanced delivery. Should the Contractor fail to deliver any of said vessels on the dates herein fixed, the Contractor agrees to pay the Owner, as liquidated damages on each such vessel Three Hundred Dollars (\$300.00) for each and every day of delay in delivery of such vessel; but it is hereby agreed that the total premium or liquidated damages so to be paid shall in no case exceed the sum of Twenty-five Thousand Dollars (\$25,000) for any such vessel. Premiums or liquidated damages shall be added to or subtracted from the final payment hereunder.

IX.

Lien and Taxes.—The Contractor agrees to deliver the vessel to the Owner free and clear of any lien or encumbrance. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and/or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VII have been and/or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations for labor and materials, supplies, or equipment used or to be used in the construction of the vessels hereunder,

are unpaid, and the Owner may at its option, out of any amount not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such obligations, or with the consent of the Contractor satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option or satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of the said vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents.—The Contractor agrees to protect the Owner from all claims arising from accident or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor, and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instructions of the Owner in connection therewith.

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XI.

Labor.—This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and, or providing for the payment of extra compensation for over-time work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VII hereof.

XII.

Not Assignable.—This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the con-

struction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article V hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery, and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.—No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats. 1109).

XIV.

Insolvency of Contractor.—Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' & Material Men's Bonds.—The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all such bond or bonds for the protection of claims and or liens of laborers, and or material men, as may be required by the laws of the United States.

XVI.

Permits.—The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of work, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State, and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

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XVII.

Cancellation.—The progress of the work shall be at all times satisfactory to the Owner. Should the progress of the work not be satisfactory to the Owner then the Owner may, upon thirty (30) days' written notice to the Contractor, cancel this contract as to further performance thereof. Thereupon the Contractor shall complete only such vessels, or parts of vessels, as the Owner shall direct

in writing. The cancellation shall not affect the terms of the contract as to the vessels completed or directed to be completed.

The Contractor shall be reimbursed for losses sustained by such cancellation in computing such losses, there shall be included for each vessel under construction a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit or cost the average actual experience of the Contractor on vessels constructed for the Owner shall be taken as the basis of the computation.

In computing such losses the following shall not be included:

- (a) profits on vessels not under construction;
- (b) profits that the Contractor might have earned in other transactions.

If the parties cannot agree upon the amount of the loss, it shall be determined on the above basis and by arbitrators, one to be chosen by each party and the third by the two so chosen, and the decision of a majority of the arbitrators shall be conclusive and binding upon the parties hereto.

XVIII.

Checks.—Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle.

65 In witness whereof the parties hereto have caused this supplemental agreement to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day first above written.

[SEAL.]

SKINNER & EDDY CORPORATION.
By LOUIS TITUS,

Atty. in Fact.

Attest

Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.
By CHARLES PIETZ,

Vice-President.

Attest

LESTER SISLER,

Secretary.

Countersigned

Approved as to form—date 2/15/18.

I. R. W.

Legal Division.

RELATORS' EXHIBIT E-3.

Contract (Lump Sum Basis) for Complete Vessel.

Contract made this 15th day of January, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, (herein called the Owner) representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I.

Work.

1. The Contractor hereby agrees to construct at its own risk and expense, in accordance with the Contractor's drawings and specifications (all drawings and specifications before binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative), hereto attached and made a part of this contract under the rules and regulations of the American Bureau of Shipping and or Lloyd's Register of Shipping, Fourteen (14) Steel vessels of the Bridge Poop and Forecastle Type, of approximately Eighty-eight hundred (8,800) Tons deadweight carrying capacity each and Eleven one-half ($11\frac{1}{2}$) knots speed light. The Contractor has the option of substituting reciprocating engines for turbines on three of said vessels.

67 2. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with full military requirements to date, according to said drawings and specifications, to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

- First vessel, June 15, 1918.
- Second vessel, July 15, 1918.
- Third vessel, August 15, 1918.
- Fourth vessel, September 15, 1918.
- Fifth vessel, November 15, 1918.
- Sixth vessel, December 15, 1918.
- Seventh vessel, January 15, 1919.
- Eighth vessel, February 15, 1919.
- Ninth vessel, March 15, 1919.
- Tenth vessel, April 15, 1919.
- Eleventh vessel, May 15, 1919.
- Twelfth vessel, June 1, 1919.
- Thirteenth vessel, June 15, 1919.
- Fourteenth vessel, July 1, 1919.

II.

Payment.

1. In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price of One Million Six Hundred and Seventy-two Thousand Dollars (\$1,672,000.00) for each of such completed vessels. Such purchase price shall be paid in the following manner:

(a) Ten per cent (10%) of the contract price of all of said steamers ten (10) days after signing this contract.

(b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

68 (d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(f) Five per cent (5%) of the contract price of each vessel when all of the frames thereof are in place and stem and stern posts are up.

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked.

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(l) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

It is further understood and agreed that if the cost of freight on materials necessary for the construction of these vessels is advanced over the present freight rate, that such additional cost of freight shall be added to the purchase price.

2. Before final acceptance of each vessel by the owner, the Contractor shall make, at the Contractor's expense a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge the propeller, will make a speed of Eleven and one-half (11½) knots over this measured course.

Inspector's Certificate.

69 3. No Inspector's certificate given or payment made on the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction and to accept such materials and workmanship as are in conformity with specifications and promptly to reject all materials and or workmanship which do not conform with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

4. It is agreed that the wages paid by the Contractor shall not exceed those paid by shipyards in Seattle District for similar work. The Owner agrees that in the event that the wage schedule in Seattle District should be increased by its direction or consent of the scale fixed by the Federal Adjustment Wage Board on November 3, 1917, together with the ten per cent bonus thereon effective a December 13, 1917, and becoming permanent on February 1, 1918, that such increase will be borne by the Owner.

The Contractor agrees that it will comply at all times with instructions as to wages, hours or other conditions of labor issued by the Owner and applying to yards in the Seattle District.

If Sunday, holiday or overtime work be resorted to, it shall be without additional cost to the Owner, unless specifically ordered by the Owner.

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Inspectors and Auditors.

5. The Owner's inspectors or other duly authorized representatives shall have full and free access to the works of the Contractor to all work and material in connection with the construction of vessels hereunder.

III

Alterations.

1. The Owner shall have the right but only by order in writing to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accept and carry the same into effect upon proper compensation or allowance being agreed therefor, as though such alterations, omissions, additions or substitutions were originally provided for in this contract. If by reason thereof the cost of the construction hereunder

shall be increased then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VII hereof.

Delay.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquakes, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of Contractor to receive material or machinery for any cause beyond the Contractor's reasonable control (it being understood however, that in all sub-contracts due care will be exercised in the selection of competent and reliable sub-contractors, and all proper precautions taken to insure, so far as practicable, the faithful performance of any sub-contract as may be made), or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor, within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed, and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV.

Insurance.

The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and

risks of launching during such construction and until final completion and delivery to and acceptance by the Owner; such insurance to be in the usual form and to be payable to the Owner at the Contractor as their interests may appear, and for an amount not less than the amounts of the installments of payment, which from time to time have been made; provided, That the amount of insurance required shall not exceed, at any time, the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance and reducing the contract price by an amount corresponding to the cost of said insurance.

V.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress (unless caused by circumstances beyond its control), the Owner may declare this contract forfeited. At that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto. The Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, That if the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

VI.

Title.

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America and that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver of

the Owner of its right to direct the replacement of unsatisfactory workmanship and or materials.

VII.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

74 In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the General Manager, as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board, shall, within thirty days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VIII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work under taken hereunder.

Bonus and Liquidated Damages.

Should the contractor succeed in delivering any of said vessels to the Owner complete before the dates above provided, the Owner

75 agrees to pay, as premium for advanced delivery for each completed vessel so delivered, the sum of Three Hundred Dollars (\$300) per day for each and every day gained by such advance delivery. Should the Contractor fail to deliver any of said vessels on the dates herein fixed, the Contractor agrees to pay the owner, as liquidated damages on each such vessel Three Hundred Dollars (\$300.00) for each and every day of delay in delivery of such vessel; but it is hereby agreed that the total premium or liquidated damages so to be paid shall in no case exceed the sum of Twenty-five thousand Dollars (\$25,000) for any such vessel. Premiums or liquidated damages shall be added to or subtracted from the final payment hereunder.

IX

Lien and Taxes

The contractor agrees to deliver the vessels to the owner free and clear of any lien or encumbrance. The contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard to which the provisions of Article VII have been and are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing no obligations for labor and materials, supplies, or equipment used to be used in the construction of the vessels hereunder, are unpaid and the Owner may at its option, out of any amount not paid to Contractor hereunder withhold such amount as may be necessary to satisfy such obligations, or with the consent of the Contractor satisfy the same. In the event of the filing or attaching of

76 a lien or encumbrance (whether valid or invalid) against a vessel before the final payment, the owner may at its option out of any amount not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will exercise its option to satisfy or remove any lien or encumbrance the Contractor desires to contest it, provided that the Contractor immediately take such steps as in the judgment of the Owner, prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred in reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or right in rem of any kind shall lie or attach upon or against any of said vessels or their mate-

ery, fittings or equipment, or the materials thereof or any part thereof, or of either for or on account of any work done upon or about said vessels machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessel shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state or federal taxes which may be assessed or assessable on account of this contract.

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X.

Claims and Patents.

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented articles, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instruction of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency

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Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon shall be determined as provided in Article VII hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of article V hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery, and equipment, or the use thereof, for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1169).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' & Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all

such bond or bonds for the protection of claims and/or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Permits.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction work, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

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XVII.

Cancellation.

The progress of the work shall be at all times satisfactory to the Owner. Should the progress of the work not be satisfactory to the Owner then the Owner may, upon thirty (30) days' written notice to the Contractor, cancel this contract as to further performance thereof. Thereupon the Contractor shall complete only such vessels, or parts of vessels, as the Owner shall direct in writing. The cancellation shall not affect the terms of the contract as to the vessels completed or directed to be completed.

The Contractor shall be reimbursed for losses sustained by such cancellations. In computing such losses, there shall be included for each vessel under construction a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit or cost the average actual experience of the Contractor on vessels constructed for the Owner shall be taken as the basis of the computation. In computing such losses the following shall not be included:

- (a) profits on vessels not under construction;
- (b) profits that the Contractor might have earned in other transactions.

If the parties cannot agree upon the amount of the loss, it shall be determined on the above basis and by arbitrators, one to be chosen by each party and the third by the two so chosen, and the decision of a majority of the arbitrators shall be conclusive and binding upon the parties hereto.

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XVIII.

Checks.

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail, at Seattle, Washington.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL.] SKINNER & EDDY CORPORATION,
By LOUIS TITUS,
Atty. in Fact.

Attest
L. B. STEDMAN,
Secretary.

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,
President.

Countersigned
JAMES G. EDDY.

[SEAL.] UNITED STATES SHIPPING
BOARD EMERGENCY FLEET
CORPORATION,
By CHARLES PIEZ,
Vice-President.

Attest
LESTER SISLER,
Secretary.

Approved as to form.
Date 1/15/18.
C. M. W. Jr.,
Legal Division.

82 United States Shipping Board Emergency Fleet Corporation

Washington.

May 17, 1918.

Louis Titus, Esq.,
Attorney in Fact Skinner & Eddy Corp.,
Westory Building,
Washington, D. C.

DEAR SIR:

Contract # 175 S. C.—Amendment of Paragraph Two of Article 111.

Referring to your letter of May 15th, 1918.

It is agreeable to this Corporation and it hereby agrees that the contract with Skinner & Eddy Corporation, dated January 15th, 1918, providing for the construction of fourteen (14) 8800-ton vessels, which contract is designated as contract # 175 S. C., is amended in the second paragraph of Article 111 by the insertion after the language "or by reason of instructions given by the Owner under Article XI heresof" of the following words: "or any other cause beyond the reasonable control of the contractor."

You are requested to evidence your acceptance of this amendment upon the copy of this letter enclosed herewith.

Yours very truly,
(Signed)

HOWARD COONLEY,
Vice-President.

(Accepted)

SKINNER & EDDY CORPORATION,
By LOUIS TITUS,
Atty. in Fact.

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RELATOR'S EXHIBIT E-4.

Agreement to Contract No. 175 S. C.

Skinner & Eddy Corporation.

Washington, D. C.

This supplemental agreement executed the 16th day of February, 1918, amending contract between the parties hereto entered into on January 15th, 1918, for fourteen (14) steel vessels;

Witnesseth:

The Contractor desires certain important changes to be made in its contract Number 10 executed between the parties on May 28th, 1917, and the Owner is unwilling to consent to such changes unless the amendment herein provided for can be made.

In consideration of the premises and of the mutual undertakings of the parties, it is agreed that the second paragraph of Section 3 of Article II of said January 15th contract, to be found on the 4th page thereof, shall be amended as follows: In the fifth line of said paragraph, the word "written" shall be inserted before the word "direction," while the words "or consent" shall be stricken out; and, in the ninth line thereof, there shall be a comma after the word "Owner," followed by the words "otherwise it will be borne by the Contractor."

This supplemental agreement is executed on behalf of the Contractor by Louis Titus, its attorney in fact, under power of attorney, copy of which is attached hereto, the original being in the Owner's possession.

SKINNER & EDDY CORPORATION,
By LOUIS TITUS,
Atty. in Fact.

Witness:

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By CHARLES PIEZ,
Vice-President.

Attest

LESTER SISLER,
Secretary.

Approved as to form.

Date: 2/15/18.

I. B. W.,
Legal Division.

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RELATOR'S EXHIBIT E-5

May 11th, 1918

Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

On August 3rd, 1917, we requisitioned eight ships under construction in your yard. All of these have been delivered.

We have since placed a contract with you, known as Contract #10, and on this contract two ships remain to be delivered. We have likewise placed with you Contract #175 for fourteen ships, of which you have delivered one.

We have made an arrangement with the Seattle Construction & Drydock Co., fully set forth in letter dated May 10, 1918, a copy of which is hereto annexed, by the terms of which we are to acquire their real estate, plant, equipment and machinery at Seattle, and have made certain other arrangements more fully set forth in that letter.

We are desirous of leasing this yard to your Company and of making an agreement with you to sell the yard to you upon the termination of the lease. We are likewise desirous of placing additional contracts with your Company for ships to be constructed at your present yard and a still further contract for ships to be constructed at the Seattle Construction & Drydock Company yard.

We now make you the following proposition:

(1) We will ascertain within the next 90 days the exact amount of money which it will be necessary to pay to the Seattle Construction & Drydock Company and others in accordance with the letter hereunto annexed, and will state this sum to you. We shall enter into a lease with you based on the sum so ascertained which will provide for the use of the entire yard by you and the payment as a rental by you to us of \$125,000 per ship for the first 30 ships delivered under the new contract to which reference is hereafter made. At the time of completion of the 30th ship we will sell to you and you will buy all of the property and you will pay therefor to us in cash all sums which we have paid in accordance with the letter annexed hereto, plus interest and other charges which we shall have to pay on the mortgages on the Seattle Construction &

Drydock Company plant, less the amount of rental paid by you to us at that date. We shall charge to this account interest on the full amount of your outlay, including the mortgages, at the rate of $5\frac{1}{2}\%$ per annum, but of this interest we shall pay the interest charges on the mortgages. We shall, from time to time, pay off on account of their principal sums, to the end that these mortgages may be satisfied as promptly as possible, and you will ultimately receive the plant and equipment free and clear of all encumbrances. If such payment involves the payment of a premium, you will pay the premium. We shall also credit you with interest on each installment of rental paid by you at the rate of five per cent per annum from the date of the payment of such installment of rental. The amount thus ascertained shall be paid by you to us as the full purchase price of the property and upon receipt thereof we shall deed you said property free of all mortgages or liens except such as may be created by you.

(2) There are at the present time on the ways at the plant four Hulls, Nos. 108, 109, 110 and 111 partially completed. These are under direct contract with us on a basis of \$175 per deadweight ton. We shall adjust with the Seattle Construction & Drydock Company for work done up to the present time, and shall pay to your Company the same proportion of the contract price as is represented by the state of incompleteness of the ships. The percentage of completion of the ships shall be determined by our District Officer, Captain John F. Blain.

(3) We shall alter the provisions of Contract No. 175 so as to pay you an *additional* \$50,000 per ship on each ship delivered 90 days ahead of the contract date, and provided you anticipate all the delivery dates provided for in that contract by an average of 90 days then you shall receive such additional bonus on all fourteen of said ships, but this is upon the express condition that there shall be no claims for overtime or overhead based on overtime in connection with these ships.

(4) We shall award you the contract for fifteen ships to be completed at your present plant on the basis of \$190 a ton, with the usual protection on labor and freight and with a provision for payment of \$50,000 extra bonus if you meet the delivery dates named in the contract which is in the course of preparation.

(5) We shall award you an additional contract for 35 ships for construction at the Seattle Construction & Drydock Company yard on the same basis as the contract referred to in the last preceding paragraph, but with the further provision that you guarantee the delivery of 35,000 tons per way per year, the year to commence on October 1st, 1918. In the event that you fail to deliver 175,000 tons before October 1st, 1919, you are to forfeit all bonuses and \$25,000 per ship for each ship not delivered.

(6) There will be no readjustment for losses or shortage in profits on the ships requisitioned on August 3rd, 1917.

(7) No overtime or overhead based on overtime shall be paid on any of your ships.

(8) You are to execute a more formal agreement if we consider such necessary.

Very truly yours,

(Signed)

HOWARD COONLEY,

Vice-President.

87 Approved

CHESTER W. CUTHELL, (Signed),

General Counsel.

Accepted

SKINNER & EDDY CORPORATION,

By LOUIS TITUS, (Signed),

Attorney in Fact.

May 10th, 1918.

Seattle Constr. & Drydock Co.,

Seattle, Washington.

GENTLEMEN:

On August 3rd, 1917, we requisitioned while under construction in your yard Hulls Nos. 91 to 99, both inclusive, 101, 102 and 103. Of these Hulls, Nos. 92, 93 and 94 have been delivered and No. 91 has been launched.

We subsequently placed with you a contract for the construction of ten completed ships (Contract # 13), Hulls Nos. 104, 105 and 108 to 115, both inclusive. Of these Nos. 108 to 111, both inclusive, are now on the ways at Seattle.

Hulls Nos. 95, 97, 98, 99, 101, 102 and 103 are being constructed at Todd Drydock & Construction Company at Tacoma.

We desire to acquire certain of your assets, and we now make you the following proposition:

(1) We will purchase from you all of your real estate, plant, equipment and machinery at Seattle (with the exception of the drydocks) for the total sum of \$3,874,313, of which sum we are to pay you \$1,374,313 in cash at the time of the delivery of the documents, and the balance by accepting the property subject to the existing mortgages totaling \$2,500,000, of which \$1,500,000

88 000 bears interest at the rate of 4½% per annum and matures in 1926, and the other \$1,000,000 bears interest at the rate of 6% per annum and matures in 1922. We, or our nominee, will assume these mortgages, if after an examination of the provisions of the mortgages or deeds of trust we are convinced that a foreclosure would follow if we did not assume them. We shall likewise take such steps as may be necessary to relieve your other assets from the liens of these mortgages, and will hold you harmless from the possibility of a deficiency judgment. The purchase price is based on your balance sheet as of January 31. We shall pay in addition to said sum, the cost of additions to the plant and equipment from January 31st to May 31st, 1918, minus depreciation for the same period.

(2) We are to select sufficient material now on your premises to complete Hulls Nos. 108, 109, 110 and 111; and are to pay you the actual cost thereof to your Company, including freight and cartage, less what has already been paid for by us or the former owner.

(3) You are to remove the two drydocks, and we are to pay the tonnage expense to any point in Seattle or Tacoma.

(4) We are to select five-twelfths of all stock and supplies, and to pay you actual cost to your Company for the same.

(5) The other seven-twelfths of said stock and supplies and remaining hull materials you are to remove from the premises with all reasonable speed, and we are to pay the actual expenses of moving the same to the plant of the Todd Drydock & Construction Company.

(6) Hulls Nos. 104, 105, 112, 113, 114 and 115 are to be built at the Todd Drydock & Construction Company plant, in accordance with our existing contract with your Company, and we are to order promptly four additional ships under the same contract and at the same terms.

89 (7) We are to pay to your Company for the requisitioned ships, as above stated, actual cost, in accordance with the definition herunto annexed, plus \$10.00 per deadweight ton. Although some of these ships are under construction at the Tacoma plant, there is to be no inter-company profit charged. You are to credit to us all sums which you have heretofore received either from the former owners or from ourselves. You are to remove Hull No. 95 and finish the same at the Tacoma plant.

(8) As to Nos. 108, 109, 110 and 111, you are to state the amounts of the costs up to the date of the transfer, and will credit all progress payments which you have received, either from the former owners or from ourselves and proper distributed amounts from the payments received by you through the impressed fund. We are to pay you any balance if you have been underpaid and you are to return to us proper sums if you have been overpaid.

(9) You are to remove at our expense the materials and special equipment for Nos. 100, 106 and 107, being scout cruisers under construction for the Navy, to the Tacoma plant. You are to pay for this special equipment at cost.

(10) We are to cause to be constructed boilers and engines for seven commandered ships, Hull Nos. 96 to 99, inclusive, 101, 102 and 103, and the six contract ships, Hulls Nos. 104, 105, 112, 113, 114 and 115 at a reasonable lump sum price to be hereafter determined by Captain John F. Blain.

(11) We are not deducting any depreciation from your property figures, and for that reason we shall not allow any depreciation as an item of cost in the arrangement covering the requisitioned ships.

90 (12) You are to remove the drydocks as soon as possible, but in no event later than September 1st, 1918. During the period that it remains on the property above described, you are to pay to us or to our nominee as rental one-quarter of

all of the dockage charges. The other three-quarters, whether collected by us or by yourselves, is to be paid or retained by you. To insure the proper operation of the dock, your Company is to have the privilege of naming the men who are actually to operate it, and you are to pay their wages. The prevailing rates of dockage charges are to be charged, and all of the repair profits are to be made by us or our nominee.

(13) The transfer shall take effect as of the close of business on May 31st, 1918.

(14) You are to supply us promptly with the necessary information for search of title of the property and bring your books, records and financial statements up to date.

(15) If not completed before May 31st, you are to remove the "Nankin" (ex "Congress") and the destroyer (together with all special equipment and material therefor) which you are constructing for the Navy from the plant at Seattle and finish them somewhere else, subject to the consent of the Navy as to the destroyer. If such consent is not obtained, then arrangements for the use of the plant and equipment are to be made with us or our nominee on reasonable terms to be determined by Captain John F. Blain.

(16) You are to execute a more formal agreement if such is considered necessary by us.

(17) It is our intention in making this transaction to expedite the construction of ships, and we anticipate that there may be certain minor matters which will have to be adjusted.

With your approval, we shall name Captain John F. Blain, District Officer, to determine all questions of differences between you and the prospective purchaser of the property or between you and us.

Very truly yours,

(Signed)

HOWARD COONLEY,

Vice-President.

Approved

CHESTER W. CUTHELL,

General Counsel.

Accepted

SEATTLE CONSTRUCTION & DRY-
DOCK CO.,

By TODD SHIPYARDS CORPORATION,

(Signed) By GEORGE PALMER,

Vice-President.

C. W. C. J. H. W.

RELATOR'S EXHIBIT E-6.

*Contract 300 (Lump Sum Basis) for Complete Vessel—Steel
Furnished*

Contract made this 27th day of May, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Cor

tractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

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1.

Shipbuilding Plant.

1 The Contractor agrees to maintain upon a suitable site at Seattle, Washington, (which site shall provide ample depth of water for launching the vessels herein contracted for and for navigating said vessels to the high seas) a complete shipbuilding plant, including office buildings, shops, building slips, plant equipment and appurtenances, including proper fire protection, adequate to assure the construction, completion and delivery of the vessels under the terms and at the times hereinafter provided for.

Work.

2 The Contractor hereby agrees to construct at its own risk and expense, in accordance with the Contractor's drawings and specifications, (all drawings and specifications, before binding on the Owner, must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract, under the rules and regulations of the American Bureau of Shipping fifteen (15) steam, steel vessels of 9,600 tons dead weight carrying capacity each, and eleven and one-half knots speed at light draft. Said vessels to be similar to those now being constructed under the contract of Jan. 15th, 1918, designated as Contract No. 175 S. C., except that they shall have shelter decks and be constructed to burn both coal and oil.

Deliveries.

The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment, with full military requirements, according to said drawings and specifications to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

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First	vessel on or before	Jan.	31st, 1919.
Second	" " " "	Feb.	15th, 1919.
Third	" " " "	March	3rd, 1919.
Fourth	" " " "	"	18th, 1919.
Fifth	" " " "	April	2nd, 1919.
Sixth	" " " "	May	2nd, 1919.
Seventh	" " " "	"	17th, 1919.
Eighth	" " " "	June	1st, 1919.
Ninth	" " " "	"	16th, 1919.
Tenth	" " " "	July	1st, 1919.
Eleventh	" " " "	Aug.	1st, 1919.
Twelfth	" " " "	"	16th, 1919.
Thirteenth	" " " "	Sept	1st, 1919.
Fourteenth	" " " "	"	16th, 1919.
Fifteenth	" " " "	Oct.	1st, 1919.

II.

Payment.

1. In consideration of the performance of this Agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price of One Million Eight Hundred Forty-five Thousand Dollars (\$1,845,000.00) for each of such completed vessels. Such purchase price shall be paid in the following manner:

(a) Ten per cent (10%) of the contract price of all said steamers within thirty (30) days after signing this contract.

(b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

24. (d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(f) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place, and stem and stern posts are in.

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked.

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(l) The balance of the contract price of each vessel after comple

tion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

Trial.

2. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge its propeller, will make a speed of eleven and one half ($11\frac{1}{2}$) knots over this measured course.

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Acceptance.

3. If no defects develop during the aforesaid trial and provided that the vessel has been completed in accordance with the plans and specifications and is otherwise satisfactory, the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defects in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired, to the satisfaction of the Director General of the Owner, at a port in this country and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided, further, that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars (\$25,000.00), and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

Inspector's Certificate.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or

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or workmanship as are in conformity with specifications and promptly to reject all materials and or or workmanship which do not comply with the specifications; such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

Wages to be Paid.

6. It is agreed that the wages paid shall be those fixed by the Shipbuilding Wage Adjustment Board for the Seattle District effective February 1st, 1918. In the event said Adjustment Board shall make any increase in the scale of wages, the net increase in labor cost for the vessels, shall be borne by the Owner; in the event of any decrease the Owner shall receive the sole benefit thereof. If Sunday, holiday, night work or overtime work be resorted to, it shall be without additional expense to the Owner unless specifically authorized by the Owner in advance.

Protection for Increased Freight Rates.

7. The Owner agrees to pay the increase in freight rates over those in force, as of the date of this agreement, upon all material machinery, and equipment used in the vessels herein contracted for. In order to avail itself of this protection the Contractor must furnish the Owner with the originals of all freight bills, together with 97 copies of the freight tariffs in effect at the date of this contract and the freight tariffs under which the Contractor claims the benefit of this protection, and such other documents and papers as may be necessary to determine what sums, if any, are due the Contractor. Reimbursement to the Contractor for the excess paid over the rates in force at the date of this contract, shall be made monthly, practicable.

Inspectors and Auditors.

8. The Owner's inspectors, or other duly authorized representative shall have full and free access to the works of the Contractor and to all work and material on hand. The Owner's auditors shall have the right at reasonable and proper times to inspect the Contractor's accounts, records and original entries, vouchers, and supporting papers but only upon written directions from the Owner's treasurer, general auditor or assistant general auditor. This provision, however, shall not be construed to require the Contractor to keep its accounts in a manner different from that in which they are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against

any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner; such insurance to be in the usual form and to be payable to the Owner and the Contractor as their interests may appear, and for an amount not less than the amounts of the install-
98 ments of payment which from time to time have been made:

Provided, that the amount of insurance required shall not exceed at any time the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance, or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III.

Alterations.

1. The owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time the changes are ordered.

99

Delay.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions given by the Owner under Article III and XI hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension

of the contract time shall be considered unless the Contractor, within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the Vice President of the Owner, in writing of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to
100 make such satisfactory progress, (unless caused by circumstances beyond its control) the Owner may upon thirty (30) days written notice to the Contractor declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, that if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Vice President of the Owner may deem reasonable to complete the work.

V.

Title

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner

101 of its right to direct the replacement of unsatisfactory workmanship and/or materials.

VI.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owners, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

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VII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

VIII.

Bonus and Liquidated Damages.

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of \$50,000.00 for each completed vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided, solely because of any act or default of the Owner under the terms of this contract, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default, and furthermore, if the Contractor shall succeed in delivering such vessel within such extension of time as shall be allowed it because of the Owner's act or default, the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in 103 the manner and for the purpose hereinabove provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the dates herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty Five Thousand Dollars (\$25,000), provided, however, that, if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section Two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the times herein fixed, then the number of days gained on any ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by pre-delivery of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the scheduled dates.

IX.

Lien and Taxes.

The Contractor agrees to deliver the vessels to the Owner free and clear of any lien or encumbrance. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and/or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided, together with a full release by

the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VI have been and/or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations, for labor and materials, supplies or equipment used or to be used in the construction of the vessels hereunder, are unpaid, and the Owner may at its option, out of any amount not paid to the Contractor hereunder, withhold such amount as may be necessary to satisfy such obligations, or with the consent of the Contractors satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights

and for the use of all patented articles and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claim made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation.

106 Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instructions of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and or providing for the payment of extra compensation for overtime work will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing to it

of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1109).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, 108 all such bond or bonds for the protection of claims and or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant, and of the work being carried on thereon, the Contractor shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant property, and of the work in progress for the United States Shipping Board Emergency Fleet Corporation, against espionage and acts of war, and any damage or delay that might result therefrom as may be required by the United States Shipping Board Emergency Fleet Corporation. Any saving in insurance by reason thereof to accrue to the Contractor, or the Owner, at its option, may do the work or may require the Contractor to do it, the Owner paying the actual cost thereof, in either of which events the Owner shall receive the sole benefit of any reduction in insurance. Should the Owner do the work or pay the cost thereof, all

devices and fixtures installed and other improvements made or purchased by the Owner, although affixed to the realty, shall be and remain the Owner's property, with the right to remove the same upon the termination of the contract. The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner, less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon, it shall be determined by arbitrators appointed in

the manner provided for in Article VI. In the event the
109 Owner installs the fixtures or improvements or pays the cost thereof the Contractor agrees that it will execute such chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's right and title in and to the property so furnished or paid for by it.

XVII.

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant at Seattle is suitable in all respects. That there is ample water for the launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exist or will be provided by the Contractor ample facilities for the transportation of material and employees to Contractor's yard.

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XIX

Checks

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

In Witness Whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER AND EDDY CORPORATION,

By LOUIS TITUS,

Atty. in Fact.

By D. E. SKINNER,

President.

Attest

[SEAL.] L. B. STEDMAN,

Secretary.

Countersigned

SKINNER & EDDY CORPORATION,

By JOHN W. EDDY,

Director.

UNITED STATES SHIPPING BOARD

EMERGENCY FLEET CORPORATION.

By HOWARD COONLEY,

Vice-President.

Attest

[SEAL.] STEPHEN BOURNE,

Secretary.

Approved as to form.

Date 6/6/18.

W. H. W. JR.,

Legal Division.

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RELATOR'S EXHIBIT E-7.

United States Shipping Board Emergency Fleet Corporation,
Philadelphia, Pa.

June 25, 1918.

The Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

In reference to Clause XX of Contract No. 324, please be advised that this clause has been inserted in order to give us control of the allocation of orders for certain raw materials, machinery and supplies for the proper accounting of which we are answerable to the War Industries Board. As you probably know, the President of the United States has given broad authority to the War Industries Board for the mobilization of all industries for war purposes and we are required by Mr. Baruch, the Chairman of the War Industries Board, to submit a list of requirements of both raw and finished materials before contracts are placed, so that the War Industries Board may determine, in case the demand far exceeds the supply, where orders shall be placed.

The War Industries Board has no intent to interfere with the processes of business when a sufficient supply of material or equipment is available and it is injecting itself into this situation only to be helpful to the several Governmental agencies and their subcontractors and to avoid the delays incident to unregulated congestion.

It is on account of the foregoing that we have been compelled, in spite of the arguments used by Mr. Titus, to insist that this clause be retained.

Very truly yours,
(Signed)

CHARLES PIEZ,
Vice-President.

CP LSC.

112 *Contract—Hulls Nos. 1925-1959, Inclusive.*

Contract (Lump Sum Basis) for Complete Vessel—Steel Furnished

Contract made this 1st day of June, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the contractor) and the United States Shipping Board Emergency Fleet Corporation a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I.

Shipbuilding Plant.

1. The contractor agrees to maintain upon a suitable site at Seattle, Washington, (which site shall provide ample depth of water for launching the vessels herein contracted for and for navigating said vessels to the high seas) a complete shipbuilding plant, including office buildings, shops, building slips, plant equipment and appliances, including proper fire protection, adequate to assure the construction, completion and delivery of the vessels under the terms and at the times hereinafter provided for.

Work.

2. The contractor hereby agrees to construct at its own risk and expense, under the rules and regulations of the American Bureau of Shipping thirty-five (35) steam, steel cargo vessels, the first four of which are to be of the Well Deck Type, 8,800 tons d. W. C. capacity each, and are to be constructed under the plans and specifications attached to Contract No. 175 between the parties dated January 15, 1918, with such changes and modifications as have been made therein prior to the date of this agreement. T

remaining thirty-one (31) vessels are to be of the Shelter Deck Type and of 9,600 tons d. w. c. each and to be constructed under the plans and specifications attached to Contract No. 309 S. C. as approved by the Owner on June 15, 1918.

Deliveries.

The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment, with full military requirements, according to said drawings and specifications to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

The first	vessel,	October	31, 1918.
" second	"	November	30, 1918.
" third	"	December	31, 1918.
" fourth	"	January	31, 1919.
" fifth	"	February	28, 1919.
" sixth	"	March	15, 1919.
" seventh	"	March	30, 1919.
" eighth	"	April	15, 1919.
" ninth	"	April	30, 1919.
" tenth	"	May	31, 1919.
" eleventh	"	May	31, 1919.
" twelfth	"	June	15, 1919.
" thirteenth	"	June	30, 1919.
" fourteenth	"	July	31, 1919.
" fifteenth	"	August	31, 1919.
" sixteenth	"	August	31, 1919.
" seventeenth	"	September	15, 1919.

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The eighteenth	vessel,	September	30, 1919.
" nineteenth	"	October	31, 1919.
" twentieth	"	November	30, 1919.
" twenty-first	"	November	30, 1919.
" twenty-second	"	December	15, 1919.
" twenty-third	"	December	31, 1919.
" twenty-fourth	"	January	31, 1920.
" twenty-fifth	"	February	28, 1920.
" twenty-sixth	"	February	28, 1920.
" twenty-seventh	"	March	15, 1920.
" twenty-eighth	"	March	31, 1920.
" twenty-ninth	"	April	15, 1920.
" thirtieth	"	May	15, 1920.
" thirty-first	"	May	31, 1920.
" thirty-second	"	June	15, 1920.
" thirty-third	"	June	15, 1920.
" thirty-fourth	"	June	30, 1920.
" thirty-fifth	"	July	31, 1920.

II.

Payments.

1. In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price for each of the completed 8,800 ton vessels of One Million Seven Hundred Sixteen Thousand Dollars (\$1,716,000) and for each completed 9,600 ton vessel, the sum of One Million Eight Hundred Forty-five Thousand Dollars (\$1,845,000). Such purchase price shall be paid in the following manner:

(a) Five per cent (5%) of the contract price of all said steamer thirty (30) days after signing this contract.

(aa) Five per cent (5%) of the contract price of all of said vessels on or before November 1st, 1918.

115 (b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

(d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(f) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place, and stem and stern posts are up.

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessels are entirely caulked.

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(l) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

Trial.

2. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial covering test of main propelling machinery, boiler, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel ballast, or water tanks filled a

may be required to sufficiently submerge its propeller, will
116 make a speed of eleven and one-half ($11\frac{1}{2}$) knots over this
measured course. Both dock trial and trial trip or trips,
shall be to the reasonable satisfaction of the Owner.

Acceptance.

3. If no defects develop during the aforesaid trial and provided that the vessel has been completed in accordance with the plans and specifications and in full accord with the terms of this contract, the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defect in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired to the satisfaction of the Director General of the Owner, at a port in this country and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided further that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars (\$25,000), and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

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Inspector's Certificate.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

Wages to Be Paid.

6. It is agreed that the wages paid shall be those fixed by Shipbuilding Wage Adjustment Board for the Seattle District effective February 1st, 1918. In the event said Adjustment Board shall make any increase in the scale of wages, the net increase labor cost for the vessel shall be borne by the Owner; in the event of any decrease the Owner shall receive the sole benefit thereof. Sunday, holiday, night work, or overtime work be resorted to shall be without additional expense to the Owner unless specifically authorized by the Owner in advance.

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Protections for Increased Freight Rates.

7. The Owner agrees to pay the increase in freight rates of those in force as of the date of this agreement, upon all material, machinery and equipment used in the vessels herein contracted for. In order to avail itself of this protection the Contractor must furnish the Owner with the originals of all freight bills, together with copies of the freight tariffs in effect at the date of this contract, and the freight tariffs under which Contractor claims the benefit of this protection, and such other documents and papers as may be necessary to determine what sums, if any, are due the Contractor. Reimbursement to the Contractor for the excess paid over the rates in force at the date of this contract shall be made monthly, if practicable.

Inspectors and Auditors.

8. The Owner's inspectors, or other duly authorized representatives, shall have full and free access to the works of the Contractor and to all work and material on hand. The Owner's auditors shall have the right at reasonable and proper times to inspect the Contractor's accounts, records and original entries, vouchers, and supporting papers, but only upon written direction from the Owner's treasurer, general auditor or assistant general auditor. This provision, however, shall not be construed to require the Contractor to keep its accounts in any manner different from that in which they are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its expense for the benefit of the Owner in insurance companies satisfactory to the Owner or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, including, settling of staging, breakage of ways, and risks during launching during such construction and until final completion and delivery to and acceptance by the Owner, such insurance to be in the usual form and to be payable to the Owner and Contractor as their interests may appear, and for an amount

less than the amounts of the instalments of payment which from time to time have been made; Provided, that the amount of insurance required shall not exceed at any time the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance, or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III.

Alterations.

1. The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VI hereof. When-
120 ever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time the changes are ordered.

Delay.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions or orders given by the Owner or the United States under Articles III, XI or XX hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the contractor, within thirty (30) days from the occurrence of an alleged cause of delay shall notify the Director General of the Owner, in writing, of the facts and circumstances

in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

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IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress, (unless caused by circumstances beyond its control) the Owner may upon thirty (30) days written notice to the Contractor declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, That if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Director General of the Owner may deem reasonable to complete the work.

V.

Title.

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and 122 that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

VI.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within 123 thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

VIII.

Bonus and Liquidated Damages.

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of \$50,-

000.00 for each completed vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided solely because of any act or default of the Owner under the terms of this contract or any orders given to the Contractor by the Owner and or the United States under Article XX, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default or such orders; and, furthermore, if the Contractor shall succeed in delivering such vessel

within such extension of time as shall be allowed it because
 124 of the Owner's act or default or such orders; the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in the manner and for the purpose hereinbefore provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the dates herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty Five Thousand Dollars (\$25,000), provided, however, that if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section Two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the times herein fixed, then the number of days gained on any ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by pre-delivery of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the schedule dates.

IX.

Lien and Taxes.

The Contractor agrees to deliver the vessels to the Owner free and clear of any lien or encumbrance. The Contractor further
 125 agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided, together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VI have been and or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations, for labor and materials, supplies or equip-

ment used or to be used in the construction of the vessels hereunder, are unpaid, and the Owner may at its option, out of any amount not paid to the Contractor hereunder, withhold such amount as may be necessary to satisfy such obligations, or, with the consent of the Contractor, satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem. of any kind, shall lie or attach upon or against any of said 126 vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents.

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the

use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall

127 be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such claim is made, and obeys the instructions of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and or providing for the payment of extra compensation for over-time work will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provision of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Acts of Congress approved March 4, 1909 (35 Stats. 1109).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner,
129 all such bond or bonds for the protection of claims and/or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant, and of the work being carried on therein, the Contractor shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant property, and of the work in progress for the United States Shipping Board Emergency Fleet Corporation, against espionage and acts of war, and any damage or delay that might result therefrom as may be required by the United States Shipping Board Emergency Fleet Corporation. Any saving in insurance by reason thereof to accrue to the Contractor. Or the Owner, at its option, may do the work or may require the Contractor to do it, the Owner paying the actual cost thereof, in either of which events the Owner shall receive the sole benefit of any reduction in insurance. Should the Owner do the work or pay the cost thereof, all devices and fixtures installed and other improvements made or purchased by the Owner, although affixed to the realty, shall be and remain the Owner's property, with the right to remove the

same upon the termination of the contract. The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon, it shall be determined by arbitrators appointed in the manner provided for in Article VI. In the event the Owner installs the fixtures or improvements or pays the cost thereof the Contractor agrees that it will execute such
 130 chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's right and title in and to the property so furnished or paid for by it.

XVII

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities, which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant at Seattle is suitable in all respects. That there is ample water for launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exists or will be provided by the Contractor ample facilities for the transportation of material and employees to Contractor's yard.

XIX

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Checks

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

XX

Manner and Priority of Obtaining Materials and Equipment

It is recognized in view of war conditions, that it may become necessary for the United States to exercise control over the man-

and priority in which materials and equipment are obtained under this contract. It is agreed between the parties hereto that if it is desired by the Owner and or the United States, that all contracts and agreements for equipment and materials to be used under this contract shall be submitted to the Owner and or the United States, and that any orders given to the Contractor by the Owner, or the United States with regard to such contracts and agreements, will be promptly complied with by the Contractor.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,

President.

Countersigned:

SKINNER & EDDY CORPORATION,
By JOHN W. EDDY,

Director.

Attest:

[SEAL] L. B. STEDMAN,
Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By HOWARD COONLEY,

Vice-President.

Attest:

[SEAL] STEPHEN A. BOURNE,
Secretary.

Approved:

D. H. BENDER,
Comptroller.

Approved as to form:

Dated 6/12/18
WILLIAM H. WHITE,
Legal Division.

Supplemental contract, made this 18th day of July, 1918, between Skinner and Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part, witnesseth:

That Whereas, the Contractor is constructing and or is to construct for the Owner fifteen (15) 9,600-ton dead-weight steel cargo carrying vessels under contract No. 309 S. C., dated May 27, 1918,

and thirty-one (31) 9,600-ton deadweight steel cargo carrying vessel under contract No. 324 S. C., dated June 1, 1918, and the Contractor believes that the change in the type of construction of said vessel from the Transverse to the Isherwood system would result in earlier deliveries and the price of each vessel so constructed reduced, due to the use of a lesser amount of steel.

Now, Therefore, for a valuable consideration, receipt whereof hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I.

It is agreed that relative to the said forty-six (46) 9,600-ton deadweight steam steel cargo carrying vessels now being constructed or to be constructed by the Contractor under said contracts No. 309 S. C. and 324 S. C., the Contractor may, at its option, change the type of the construction of any of said vessels from the Transverse to the Isherwood system. Notice in writing of such change in the type of construction of any of said vessels shall be given by the Contractor to the Owner.

In the event the Contractor elects to make such change in the type of construction of any of said vessels, the purchase price of any such vessel so constructed shall be reduced from One Million, Eight Hundred Forty-Five Thousand Dollars (\$1,845,000) to One Million, Eight Hundred Twenty Thousand Dollars (\$1,820,000), and the plans and specifications of such vessels so changed as to type of construction shall be prepared by the Contractor and approved by the Owner, the American Bureau of Shipping. Except as to type of construction no change shall be made in the plans and specifications. Changes in dimensions of vessels will be permitted, but deadweight tonnage must not be reduced below 9,600 tons and vessels must make speed required in contracts 309 S. C. and 324 S. C.

II.

In addition to the Fifty Thousand Dollars (\$50,000) bonus provided for in said contracts the Owner will pay an additional bonus to the Contractor of Eight Hundred Dollars (\$800) per day per vessel for each and every day said vessel is delivered prior to the respective delivery dates specified in said contracts. In all other respects, the clause providing for bonus and liquidated damages, contracts No. 309 S. C. and No. 324 S. C. shall remain in force.

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III.

The Contractor may, at its option, construct any of such vessels on the ways of either of its shipyards but this arrangement as to the place of the construction of vessels shall in no way affect the provisions for the payment of rental due and payable under the lease dated June 1st, 1918.

IV.

Warranty Regarding Commissions.

The Contractor expressly warrants that it has employed no third persons to solicit or obtain this contract in its behalf or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that it has not paid, or promised or agreed to pay, to any third persons in consideration of such procurement or in compensation for services in connection therewith any brokerage, commission or percentage upon the amount receivable by it hereunder, and that it has not in estimating the contract price demanded by it, included any sum by reason of any such brokerage, commission or percentage, and that all moneys payable to it hereunder are free from obligation to any other persons for services rendered or supposed to have been rendered in the procurement of this contract.

It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Owner and that the Owner may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission or percentage so paid, or agreed to be paid.

V.

Except as herein provided, all the provisions of said contracts 309 S. C. and 324 S. C. shall be unchanged and shall remain in full force and effect.

134 In witness whereof, the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL]

SKINNER AND EDDY CORPORATION,

By D. E. SKINNER, (Signed)

President.

LOUIS TITUS,

Director.

Attest

I. B. STELDMAN,

Secretary.

[SEAL]

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,

By HOWARD COONLEY, (Signed)

Vice-President.

Attest

(Signed) STEPHEN BOURNE,

Secretary.

Approved as to Form. Date 9-9-18.

(Signed) HARRY F. HELVIG

Legal Division.

Approved

(Signed) D. H. BENDER,

Comptroller

By T. ED. NEW, Asst.

Approved Sept. 18, 1918.

MORRIS DONN FERRIS,

Manager, Contracts Division

Approved 9 10 18

(Signed) DANIEL H. COX

A. B. H.

Manager Division of Steel Ship Construction

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RELATOR'S EXHIBIT E-9

Contract No. 447

Contract made this 18th day of July, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor) and the United States Shipping Board Emergency Fleet Corporation, Corporation organized under the laws of the District of Columbia, (herein called the Owner) representing the United States of America, party of the second part.

For a valuable consideration, receipt of which is hereby acknowledged by both parties and in consideration of the mutual promise of the parties, it is agreed as follows:

I

Shipyard

1. The Contractor agrees to maintain upon a suitable site, a complete shipbuilding plant, including unobstructed channel to the sea, office building, shops, building ships, plant equipment and appurtenances including adequate protection against fire, fencing and other necessary arrangements for protection of the yard and the Owner's interests against trespassers, necessary and proper hygienic and sanitary conditions, which site shall be served with ample facilities for the transportation of materials and employees and shall be located as to have available sufficient housing accommodations for Contractor's employees, all to be satisfactory to the Owner and adequate to insure the construction, completion and delivery of vessels under the terms and at the time herein provided for.

Work

2. The Contractor hereby agrees to construct at its own risk and expense, under the rules and regulations of the American Bureau of Shipping, twelve (12) steam steel cargo carrying vessels of 1

shelter deck type and of 9,600 tons deadweight carrying capacity each. The vessels to be constructed in accordance with the drawings and specifications prepared by the Contractor, which shall be identical with the plans and specifications for the 31 vessels, shelter deck type, provided for in Contract $\#$ 324 S. C. between the parties, except as they may be changed under terms of contract supplemental to $\#$ 309 S. C. and 324 S. C. It is agreed, however, that the type of construction of said vessels may be changed to the Isherwood construction at the Contractor's option, in which event changes in the dimensions of said vessels will be permitted, provided the deadweight tonnage is not reduced below 9,600 tons and the ships make the speed of $11\frac{1}{2}$ knots under all the required conditions of Article II, Section 2 hereof. If the Contractor exercises its option to change the type of construction to Isherwood construction, then the plans shall be approved by the American Bureau of Shipping. All plans and specifications shall be attached hereto and made a part hereof and shall bear the approval in writing of the Owner.

Deliveries

3. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with full military requirements according to said drawings and specifications to the Owner afloat at the works of the Contractor at Seattle, Washington, as follows:

Two of said vessels on August	31, 1919
" " " " "	September 30, 1919
" " " " "	October 31, 1919
" " " " "	November 30, 1919
" " " " "	December 31, 1919
" " " " "	January 31, 1920

4. It is understood and agreed that none of the vessels herein contracted for are to be constructed at what is known as Plant $\#$ 2 of the Contractor until such time as all of the vessels to be constructed under Contract $\#$ 324 S. C. and Contract $\#$ 309 S. C. between the parties have been completed and delivered to the Owner.

II

Price

1. In consideration of the performance of this agreement by the Contractor the Owner agrees to pay therefor a lump sum purchase price of One Million Eight Hundred Forty five Thousand

Dollars (\$1,845,000) for each of such completed vessels. Provided, that in the event the Contractor, at its option, changes the type of construction of any of said vessels from the Transverse to the Isherwood system, the purchase price for any such vessel shall be One Million Eight Hundred Twenty Thousand Dollars (\$1,820,000).

Such purchase price shall be paid in the following manner:

(a) Five per cent (5%) of the contract price of all said vessels thirty (30) days after signing this contract.

(b) Five per cent (5%) of the contract price of all of said vessels on or before November 1st, 1918.

(c) Ten per cent (10%) of the contract price of each vessel the keel thereof is laid.

(d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

(e) Five per cent (5%) of the contract price of each vessel fifty per cent (50%) of the tank top is in place.

(f) Five per cent (5%) of the contract price of each vessel one-half of the frames thereof are in place.

(g) Five per cent (5%) of the contract price of each vessel all the frames thereof are in place, and stem and stern posts are in place.

(h) Ten per cent (10%) of the contract price of each vessel one-half of the plating is bolted in place.

(i) Ten per cent (10%) of the contract price of each vessel bulkhead and decks are in place.

(j) Ten per cent (10%) of the contract price of each vessel said vessel is fully plated, and the decks and the outside of vessels are entirely caulked.

(k) Ten per cent (10%) of the contract price of each vessel said vessel is successfully launched.

(l) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(m) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by Owner of such completed vessel.

Trial

2. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial and test of main propelling machinery, boiler, auxiliaries and with a trial trip or trips over a measured mile on Puget Sound, and vessel without cargo but with fuel ballast, or water tanks full may be required to sufficiently submerge its propeller, will make speed of eleven and one-half (11½) knots over this measured course. Both dock trial and trial trip or trips shall be to the reasonable satisfaction of the Owner.

Acceptance

3. If no defects develop during the aforesaid trial and prove that the vessel has been completed in accordance with the plans and specifications and in full accord with the terms of this contract the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defect in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired to the satisfaction of the Director General of the Owner, at a port in the United States and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided, further, that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars (\$25,000) and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

Inspector's Certificate.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

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Wages to be Paid

6. It is agreed that the wages paid shall be those fixed by the Shipbuilding Wage Adjustment Board for the Pacific Coast District, effective as of the date of this contract. In the event the Adjustment Board shall make any increase in the scale of wages, the net increase in labor cost for the vessels shall be borne by the Owner; in the event of any decrease the Owner shall receive the sole benefit thereof. If Sunday, holiday, night or overtime work be resorted to, it shall be without additional expense to the Owner unless specifically authorized by the Owner in advance.

9

Protection for Increased Freight Rates.

7. The Owner agrees to pay the increase in freight rates over those in force, as of June 1, 1918, upon all material, machinery and equipment used in the vessels herein contracted for. In order to avail itself of this protection the Contractor must furnish the Owner with the originals of all freight bills, together with copies of the freight tariffs in effect as of June 1, 1918, and the freight tariffs under which the Contractor claims the benefit of this protection, and such other documents and papers as may be necessary to determine what sums, if any, are due the Contractor. Reimbursement to the Contractor for the excess paid over the rates in force as of June 1, 1918, shall be made monthly, if practicable.

Inspectors and Auditors.

8. The Owner's inspectors or other duly authorized representative, shall have full and free access to the works of the Contractor and to all work and material on hand. The Owner's auditors shall have the right at reasonable and proper times to inspect the Contractor's accounts, records and original entries, vouchers, and supporting papers, but only upon written direction from the Owner's treasurer, general auditor, or assistant general auditor. This provision, however, shall not be construed to require the Contractor to keep its accounts in any manner different from that in which they are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against any and all dangers by fire and marine risks, lightning, settling of staging, breakage of work, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner, such insurance to be in the usual form and to be payable to the Owner and the Contractor as their interests may appear, and for an amount not less than the amounts of the installments of payment which from time to time have been made. Provided, that the amount of insurance required shall not exceed at any time the amount actually in the insurance market, and that before placing the same the Owner has the option of waiving any insurance, or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III.

Alterations.

1. The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions or substitutions were originally provided for in this contract. If by reason thereof, the cost of construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased by an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions, or the cost thereof, the dispute shall be determined as provided for by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time changes are ordered.

Delay.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery, or by reason of instructions given by Owner under Articles XI and XX hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor, within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the Director General of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed, and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve its decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress, (unless caused by circumstances beyond its control) the Owner may declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto. The Owner may proceed with the completion of the vessels whether at the Contractor's shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory and Contractor's shipyard and facilities, or any part thereof.

144 Provided, however, That if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Director General of the Owner may deem reasonable to complete the work.

V.

Title.

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title to all material for the furtherance of work under this contract, however, and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials at the Contractor's expense.

VI.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or the time to be allowed

or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case, after delivery of a completed vessel to the owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or other experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall within ten (10) days be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such Board shall within thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VII

Time of Essence

It is agreed by both parties that time is of the essence of this contract. The Contractor shall commence and carry through to completion the work under this contract with all possible dispatch, shall give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any other work or service which will interfere in any material manner with the completion of the work undertaken hereunder.

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VIII

Bonus and Liquidated Damages

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of \$50,000.00 for each complete vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided solely because of any act or default of the Owner under the terms of the contract or any orders given to the Contractor by the Owner and or the United States under Article XX, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default or such orders, and, furthermore, if the Contractor shall succeed in delivering such vessel within such extension of time as shall be allowed it because of the Owner's act

or default on such orders, the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in the manner and for the purpose hereinbefore provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the date herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty-five Thousand Dollars (\$25,000) provided, however, that if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the times herein fixed, then the number of days gained on any ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by pre-delivery of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the schedule date. In addition to the Fifty Thousand Dollar (\$50,000) bonus provided for herein, the Owner agrees to pay to the Contractor the sum of Eight Hundred Dollars (\$800.00) per day per vessel for each and every day that said vessel is delayed prior to the delivery date specified herein.

IX.

Tools and Tapes

The Contractor agrees to deliver the vessels to the Owner free and clear of any liens or encumbrances. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to enable the Owner a full and unencumbered title to such vessels, including classification certificates as herein provided, and such other certificates and documents as may be necessary or required by law, together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent to which the provisions of Article VI have been and/or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations for labor and materials, supplies or equipment used or to be used in the construction of the vessel hereunder are unpaid, and the Owner may at its option, out of any amount not paid to the Contractor hereunder, withhold such

amount as may be necessary to satisfy such obligations, or with the consent of the Contractor satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against any of the vessels before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any cost, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said vessels, or their machinery, fittings, or equipment, or the materials therefor, or any part thereof, or for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing, or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all the taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

Claims and Patents

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which the Owner may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by

reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree of a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented articles, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented articles, except when the Contractor's contract plan and/or specifications provide for such use, and provided that the Contractor notifies the Owner as soon as such claim is made, and obeys the instruction of the Owner in connection therewith.

XI

Labor

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by Subcontractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any instruction the cost of any vessel hereunder shall be increased, the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII

Not Assignable

This contract may not be assigned by the Contractor without the consent of the Owner in writing; provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII

Members of Congress Not to Benefit.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909, (35 Stats. 1109).

XIV

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV

Laborers and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all such bond or bonds for the protection of claims and/or liens of laborers and/or material men, as may be required by the laws of the United States or any State in which Contractor is doing any work.

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XVI

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant, and of the work being carried on therein, the Contractor, shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant and property and of the work in progress for the Owner against fire, espionage and acts of war, and any damage or delay that might result therefrom as may be required by the Owner, and the Contractor further agrees at its own expense to promptly comply with all instructions given it by the Owner in regard to the management and conduct of its fire protection, watching and guarding systems, any saving in insurance by reason thereof to accrue to the Contractor. Or the Owner, at its option, may furnish and install such devices, in which event the Owner shall receive the benefit of any reduction in insurance as a result thereof. Should the Owner install such devices and fixtures although affixed to the realty, they shall be and remain the Owner's property, with the right to remove the same upon the termination of this contract.

The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner, less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon, it shall be determined by arbitrators appointed in the manner provided for in Article VI. In the event the Owner installs the fixtures or improvements or pays the cost thereof, the Contractor agrees that it will execute such chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's right and title in and to the property so furnished or paid for by it.

XVII

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants, and vessels in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on to completion the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant in Seattle is suitable in all respects. That there is ample water for launching of the vessels to be constructed under this contract without obstructed navigation to the high seas. Contractor further represents that there now exists or will be provided by the Contractor ample facilities for the transportation of material and employees to the Contractor's yard.

XIX

Warranty Regarding Commission

The Contractor expressly warrants that it has employed no third persons to solicit or obtain this contract or its behalf or to cause or procure the same to be obtained upon commission in any way contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any third persons in consideration of such procurement or in compensation for services in connection therewith any brokerage, commission or percentage upon the amount receivable by it hereunder and that it has not in estimating the contract price demanded

it, included any sum by reason of any such brokerage, commission, or percentage, and that all moneys payable to it hereunder are free from obligation to any other persons for services rendered or supposed to have been rendered in the procurement of this contract.

It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Owner and that the Owner may retain to its own use from any sum due or to become due thereunder an amount equal to any brokerage commission or percentage so paid, or agreed to be paid.

XX

Manner and Priority of Obtaining Materials and Equipment

It is recognized, in view of war conditions, that it may become necessary for the United States to exercise complete control over the manner and priority in which materials, supplies and equipment necessary for the work hereunder are obtained by, or furnished to, the Contractor. It is agreed between the parties hereto that if required by the owner and or the United States, the Contractor will promptly submit to the Owner and or the United States a classified schedule of the Contractor's requirements for all materials, supplies and equipment to be used under this contract, and copies of any or all contracts, agreements or orders for such materials, supplies or equipment, and the Contractor hereby agrees that it will promptly comply with and be bound by, any and all instructions issued by the Owner and or the United States with respect to such contracts, agreements or orders for materials, supplies and equipment.

XXI

Checks

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

Be witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereuntoaffixed duly attested on the day above stated.

SKINNER & EDDY CORPORATION.

[SEAL] By D. E. SKINNER (Signed)
President

Attest (Signed) J. R. STEEDMAN

Secretary
UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

[SEAL] By HOWARD COONLEY (Signed)
Vice President

Attest:

(Signed) STEPHEN N. BOURNE,
Secretary

Approved 4/10/18

(Signed) DANIEL H. COX,
*Manager Division of Steel
Ship Construction*

Approved as to form Date 9/9/18

(Signed) HARRY F. HELVIG,
Legal Division

Approved

(Signed) D. H. BENDER,
Comptroller
By T. ED. NEW, *Asst.*

Approved Sept. 18, 1918

(Signed) MORRIS DONN FERRIS,
Manager Contract Division

156

RELATOR'S EXHIBIT E-10

Supplemental Agreement to Contracts No. 309 S. C. Hulls 17-1745, Inclusive, No. 324 S. C. Hulls 1929-1939, No. 447 S. C. Hulls 2292-2303, Between Skinner & Eddy Corporation and United States Shipping Board Emergency Fleet Corporation.

Supplemental agreement executed in triplicate the tenth day December, 1918 between Skinner & Eddy Corporation, a corporation under the laws of the State of Washington (hereinafter called the contractor) and the United States Shipping Board Emergency Fleet Corporation, a corporation under the laws of the District of Columbia representing the United States of America (hereinafter called the owner). Witnesseth:

1. The contractor is constructing or is to construct for the owner fifteen (15) 9,000 ton deadweight steel cargo carrying vessels under contract 309 S. C. dated May 27, 1918 and thirty-one (31) 9,000 ton steel cargo carrying vessels under contract 324 S. C. dated July 1, 1918 and twelve (12) 9,000 ton deadweight steel cargo carrying vessels under contract 447 S. C. dated July 18, 1918 under the terms and conditions set forth in said contracts and amendments thereto.

2. Under the provisions of contract 447 S. C. and amendment to contract 309 S. C. and 324 S. C. (dated July 18, 1918) the contractor was given the option to change the type of construction of any of said fifty-eight vessels from the Transverse to the Isherw System and in the event the contractor elected to make such change in the type of construction in any such vessels, the purchase price of any such vessel so constructed was to be reduced \$25,000, to \$1,845,000 from \$1,870,000.

3. Pursuant to supplemental agreement of July 18, 1918, all referred to the contractor has proceeded to change the type of

struction of fourteen of said fifty-eight vessels from the Transverse to the Isherwood System and is constructing same in accord therewith.

157. 4. In view of the fact (recognized by the parties hereto) there was not, at the time of entering into the supplemental agreement aforesaid or contract 447 S. C. a definite and complete understanding or meeting of the minds as to the character, expense or extent of the alterations contemplated, permissible under or required by the proposed change of construction from the Transverse to the Isherwood System, and in order to settle and dispose of differences of opinion and controversies incident to and resulting from the above stated facts, the parties hereto have, in consideration of the premises and the mutual promises herein, agreed to and do hereby amend said original contracts as heretofore amended and agree as follows:

(a) The owner is to accept the fourteen vessels which the contractor has already proceeded to change from the Transverse to the Isherwood System paying the contractor One Million Seven Hundred Ninety-five Thousand (\$1,795,000) for each of the said fourteen vessels, which said sum the contractor agrees to accept in full payment therefor.

(b) The remaining forty-four vessels covered by said contracts are to be constructed under the Transverse System in accord with the original plans and specifications and at the original contract price, to wit: One Million Eight Hundred Forty-five Thousand (\$1,845,000) for each complete vessel.

Provided, however, the lines of the forty-four vessels above referred to shall be subject to change at option of the Emergency Fleet Corporation and at the option of the owner of the Isherwood type of construction may be called for on the vessels, in which event any proper credit to the owner resulting from this form of construction shall be allowed by the contractor.

Except as herein provided the provisions of said contracts, 158 S. C., 224 S. C. and 447 S. C. shall be unchanged and remain in full force and effect.

[SEAL] SKINNER & EDDY CORPORATION
By D. E. SKINNER
President

Attest:
By I. E. STEEDMAN
Secretary

[SEAL] SKINNER & EDDY CORPORATION
By H. G. SEABORN
Director

[SEAL] UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
By HOWARD COONLEY
Vice President

Attest.

By WAYNE V. O'NEIL,

Assistant Secretary.

Approved as to form.

Date 12-11-18.

CAM D. DORSEY,

Legal Division.

Noted.

D. H. BENDER,

Comptroller.

Approved 12-11-18.

DANIEL H. COX,

Manager Division of Steel Ship Construction.

Approved Dec 11 P. M.

MORRIS DOWN FERRIS,

Manager Contract Division.

159

RELATOR'S EXHIBIT F

This indenture, Made the First day of June, 1918, between United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, representing the United States of America, party of the first part, hereinafter called Lessor, and Skinner & Eddy Corporation, a corporation organized and existing under the laws of the State of Washington, party of the second part, hereinafter called Lessee.

Lessor, having entered into an agreement with Seattle Construction and Drydock Company, bearing date 19th day of May, 1918, to acquire certain assets of said company, the transfer of which by said agreement is to take effect as of the close of the business of May 31, 1918, and Lessee, having agreed with Lessor to lease the property so acquired upon terms and conditions herein set forth.

Now, therefore, this indenture, witnesseth, that Lessor has let and by these presents does grant, demise and to farm let unto Lessee and Lessee does hereby lease from lessor the following described property, real and personal, to wit:

The buildings, ways, shops and premises situate in the City of Seattle, State of Washington, consisting of approximately 33 acres of ground including the harbor area, bounded and described as follows:

Beginning at a point on the east line of Block 368, Seattle Tide Lands, which point is 3 feet south of the northeast corner of lot 5 of said block; thence west along a line parallel to and 3 feet distant south of the north line of said lot 5 to the inner harbor line; thence south 17 degrees, 14 minutes and 15 seconds west along the said

inner harbor line to the north line of Connecticut street; thence east along the said north line of Connecticut Street 709.254 feet; thence north 188.5 feet to the south line of lot 16 in said block 368, intersecting the said south line at a point 448.611 feet west of the southeast corner of said lot; thence east along the said south line of lot 16, 448.611 feet to the east line of said block 368; thence northeasterly and north along the east line of block 368 to point 3 feet south of the northeast corner of lot 5 at the point beginning (excepting therefrom the south 15 feet of lot —, block 368) together with all the right, title and interest of Lessor, secured by it from Seattle Construction and Drydock Company, in or to lands under water adjacent to the tract above described.

Together with a certain strip of land approximately 45 feet by 35 feet, lying in lot 17, block 368, and also all the right, title and interest of lessor, formerly all the right title and interest of Seattle Construction and Drydock Company, in and to certain property lying

immediately north of the first tract hereinbefore referred to

160 in and by virtue of a certain lease or agreement entered into between the owner of said property and Seattle Construction and Drydock Company, together with the plant and all equipment, fixed and portable, and machinery, wharves, piers, caissons, docks other than drydocks, structures, superstructures, erections and fixtures, and all other appurtenances and accessories purchased by Lessor from Seattle Construction and Drydock Company, by the agreement of May 10th hereinbefore referred to, exclusive of any property to be removed to the Tacoma plant of the Seattle Company, under and by virtue of the terms of the said contract of purchase and sale.

To have and to hold the above described property and premises, which will be hereinafter referred to as the "demised premises," unto Lessee from the first day of June nineteen hundred and eighteen for and during and until the full end and term of two (2) years thence next ensuing, that is to say, until the first day of June, nineteen hundred and twenty.

Yielding and Paying for the demised premises unto Lessor as and for rent reserved to Lessor, the following sums at the times specified, to-wit: The sum of One hundred and twenty five thousand (\$125,000.00) dollars, for the first of the thirty periods of demised term, that is to say, from the first day of June, nineteen hundred and eighteen, up to and including the date upon which the first of thirty-five (35) certain ships to be constructed by Lessee at the demised premises is to be delivered to Lessor by the terms of the construction contract about to be entered into between the parties, for each of the twenty nine additional periods thereafter, the sum of One hundred and twenty five thousand (\$125,000.00) dollars, to be paid at the termination of the successive periods, viz: as and when each of the next twenty nine (29) of the said thirty-five (35) ships is to be delivered by the terms of the construction contract.

If Lessee shall deliver ships under the construction contract 161 prior to the date specified in the construction contract, the equivalent period of the demised term shall be deemed to

have terminated at the date of said prior delivery and the rent reserved for said period shall become due and payable at the date of actual delivery.

Provided always, that if it shall happen that the said rent or any part thereof shall not be paid on any day on which the same ought to be paid as aforesaid, or within thirty days thereafter, or if the Lessee shall during the term of this lease vacate or abandon the aforesaid premises or violate any covenant, agreement or proviso by Lessee to be performed or fulfilled under the terms hereof, which violation shall continue for a period of thirty days after notice thereof, then and in any such case, and at all times thereafter, it shall and may be lawful for Lessor into the said demised premises, or any part thereof, in the name of the whole to re-enter and re-possess, hold and enjoy the same again, as of its former estate and interest therein, and remove all persons therefrom by summary proceedings or otherwise, anything herein contained to the contrary in anywise notwithstanding. But said Lessor shall be entitled at its election, instead of giving said notice, or terminating the lease as aforesaid for the breach of any covenant, to restrain by injunction such violation of the covenant.

And Lessee covenants and agrees to and with Lessor as follows: That it Lessee, shall and will during the term hereby demised well and truly pay unto Lessor the said rent hereby reserved at the times heretofore limited for the payment thereof, without deduction or delay.

And Lessee further covenants and agrees that it Lessee, shall and will during the whole of the demised term, and as additional rent for the demise and use of said premises, bear, pay and discharge all taxes and assessments of every nature and kind which may during such demised term be assessed, levied, confirmed or imposed upon said premises or any part thereof, expressly including any unpaid taxes or assessments levied and imposed upon said demised premises for the year nineteen hundred and eighteen, and also all such taxes, rents or charges as shall during such demised term, be charged, levied or imposed for or on account of the use of water, gas or electricity upon the said demised premises, or any part thereof, whether such rents or charges constitute liens upon the real estate or not, and whether the same be ordinary or extraordinary, of any kind, nature or description whatsoever, whether imposed by the United States or State of Washington, or by virtue of any municipal law or ordinance, and which the owner of said premises might in any event be required to pay, and also any and all other charges which may be levied, assessed or imposed, according to law, upon said demised premises, and that the payment of each and every tax and assessment, assessed, confirmed, levied or imposed upon such demised premises shall be made to the proper officers constituted by law to receive the same, within thirty days after the date when such payment shall have become so levied or due, and payable and that the receipts and vouchers evidencing such payments shall be delivered by Lessee to Lessor as vouchers

for such payments, said vouchers, however, to be returned to the Lessee after examination and comparison by the Lessor. And Lessee further covenants and agrees that if any such taxes, assessments, water or other charges shall not have been paid within the time heretofore provided for the payment thereof, the Lessor may pay the same, together with any interest or penalty that may have accrued thereon and the amount so paid by Lessor shall become due and payable by Lessee with the next installment of said rent which shall become due after such default on the part of Lessee. And summary or other legal proceedings for the recovery of the said premises may be enforced as much for such added rent as for the rent reserved at such rent day by the terms of this lease.

And also that if Lessee shall not use said demised premises but or any part thereof, or permit or suffer the same to be used

for any purpose or in any manner contrary to law or to any municipal or state law, order, rule, ordinance or regulation; and Lessee shall, at Lessee's own expense, promptly execute and comply with all such rules, orders, ordinances and regulations of the Federal, State and City Governments and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention and abatement of nuisances or other grievances, or concerning any other matter in, upon or connected with said premises, whether of a nature ordinary or extraordinary, structural in character or otherwise, during said term, and shall also at Lessee's own expense promptly comply with and execute all rules, orders and regulations of the Fire underwriters, or other constituted authority, for the prevention of fires. Lessee shall have the right to take an appeal from any rule or order affecting the premises, which is appealable, and in case of default by Lessee in the matter of any such law, order, rule, ordinance or regulation for a period of sixty days after notice thereof, or after a decision on the appeal where an appeal has been taken, Lessor may enter upon said premises and comply with and execute said rules, orders, etc. and the moneys expended by him because thereof, with interest thereon, shall become immediately due and payable to him from Lessee, and in case of default in repayment by Lessee, shall become added to and form part of the rent then due or next to become due hereunder and be collectible therewith. Nothing herein contained shall be construed to limit the obligation of Lessee under the provision of this clause.

Lessee further covenants and agrees with Lessor that if Lessee, at Lessee's own proper cost and expense, shall and will within one year from the date of these presents fully complete or cause to be completed on the premises hereby demised certain alterations, additions, improvements and betterments, and add or cause to be added to the existing equipment of the demised premises, such additional equipment as may be necessary or proper for the operation of the
164 plant is enlarged, all at a cost of not less than One million (\$1,000,000.00) dollars. Lessee expressly agrees that such additions, improvements and betterments so made and the equip-

ment added shall immediately become part of the demised premises and subject to the existing mortgage liens upon the demised premises. If the alterations, additions, improvements and betterments completed and the equipment added within a period of one year from the date of these presents shall have cost less than One million (\$1,000,000.00) dollars, Lessee covenants and agrees to pay Lessor in cash or in par value of bonds issued under either of said mortgages the difference between the actual cost and One million dollars (\$1,000,000.00), with privilege to Lessee in lieu of said cash payment to pay said difference in Liberty bonds. The amount so paid to Lessor or said bonds delivered to it instead of cash, shall be held by Lessor or at its election by the Trustee of the prior or junior mortgage covering the demised premises until such time as the said mortgage shall have been paid in full. When said mortgages shall have been fully paid, and not before, Lessor shall repay to Lessee the amount so received in cash or shall return the Liberty Bonds received if said bonds shall have been delivered to Lessor instead of cash, as herein provided.

Lessee covenants and agrees to furnish Lessor from time to time a schedule of the alterations and additions, as and when completed, and a list of the equipment as and when such equipment is added to the plant, together with a statement showing the actual cost of said alterations and improvements and of said equipment. Lessee shall hold Lessor harmless against all mechanics' or other liens and all damage or other liability to which Lessor can or could be exposed or subjected, by reason of anything contained in this paragraph.

And Lessee shall and will at its own proper cost and expense keep the entire premises, exterior and interior, in good order and in repair and shall at all times during the demised term carefully preserve and keep in thorough and good repair and working condition all machinery and other equipment attached to or part of the demised premises, and all such repairs and maintenance shall be done to the satisfaction of Lessor at the expense of Lessee, and Lessee shall renew and replace from time to time such parts of existing equipment or equipment added in accordance with the provisions hereof as may be worn out, lost or destroyed from any cause whatsoever during the term, with new property of the same quality and character, to the end that the property subject to the provisions herein shall at all times during the demised term be undiminished in amount and value, except so far as it may be effected by orderly use or wear. All such renewals and replacements shall become part of the demised premises and shall be subject to the lien of the existing mortgages.

And Lessee further covenants and agrees that it will at all times save Lessor harmless of and from all claim, liability, loss, damage, suits, costs and expenses by reason of any injury to persons or property, arising out of any and all activities connected with the operation of the demised premises or of any of the component parts thereof, or arising out of any act or omission of Lessee whatsoever, or by reason of the breach of any rules, ordinances or regulations of

the Police, Building, Fire, or other municipal department of the City of Seattle, during the term of this lease, and will, at Lessee's own expense defend any and all suits that may be brought against Lessor upon any such claim or claims and will satisfy, pay and discharge any and all judgments that may be recovered against said lessor in any such suit or suits.

And also that it, said Lessee, shall not, nor will at any time or times hereafter during the term hereby granted, assign, transfer or make over this present lease or in any way encumber this lease to any person or persons whomsoever, without the consent of Lessor in writing, for that purpose first had and obtained, said Lessee paying any expense thereof, anything hereinbefore contained to the
166 contrary thereof, in anywise notwithstanding, said consent not to be unreasonable withheld by Lessor.

No assignment or sublease by Lessee of all or any part of the term hereby demised shall operate to relieve Lessee of its liability for rent or the due performance of all the covenants and provisions hereof, and its liability as lessee shall continue during the term.

It is understood and agreed that Lessor does not warrant or warrant the safety, suitability or tenantability of the demised premises, and Lessor shall not be responsible for any latent or other defects in the premises nor for any damage to the same or to goods or other things therein contained or stored, by any overflow or leakage upon or into the premises or for damage arising from any source whatever, and the rents shall not be withheld or diminished on account of such damage.

And it is further covenanted and agreed that in case the rent herein reserved, or any part thereof (including the taxes, assessments, water rents and insurance premiums herein agreed to be paid as additional rent by said Lessee, and also any other charges which may be levied, assessed or imposed, according to law upon said demised premises as aforesaid) shall at any time be unpaid when due, or within thirty days thereafter, or the demised premises shall be abandoned or become vacant, or in case of the breach of any covenant or condition whatsoever herein contained on the part of the Lessee to be done, kept or performed, continuing for a period of thirty days after notice, or in case Lessee shall take the benefit of any insolvent act of the State of Washington, or shall be adjudicated a bankrupt or bankrupts under any bankruptcy law of the United States, then Lessor, at its option, shall have the power and the right to terminate and end this lease, and the term granted and all rights and interests under this lease by giving thirty days' notice in writing

to Lessee whereupon this lease and said term and interest and
167 all right and claim under this lease shall cease and end, and Lessor shall be entitled to the immediate possession of said premises, and to take summary proceedings against the Lessee to recover possession of said premises.

And it is further covenanted and agreed by and between the parties hereto that in case the rent herein reserved or any part thereof (including the taxes, assessments, water rents and insurance premiums herein agreed to be paid as additional rent by Lessee, and

also any other charges which may be levied, assessed or imposed according to law, upon said demised premises) shall be at any time unpaid when due, or within thirty days thereafter, or the demised premises shall become vacant, or in case of the breach of any covenant whatsoever herein contained on the part of the Lessee to be done, kept or performed, continuing for a period of thirty days after notice as aforesaid, then and thereforth it shall be lawful for Lessor to re-enter upon the said demised premises or any part thereof and the same to have again, repossess and enjoy, as in its first and former estate, anything herein contained to the contrary notwithstanding; or Lessor may, at its option, relet the said premises from time to time, as the agent of Lessee, in the name of either the Lessor or Lessee, collecting and applying the avails to repay the expense of recovering possession and then to pay the rent reserved in this lease, rendering the overplus, if any, at the end of the term, to Lessee who, however, shall in case of re-entry, and whether the premises are relet or otherwise, remain liable during said term, or renewal term, for a sum equal to the rent herein reserved and payable at the same period, less the avails of reletting, if any.

Said Lessee agrees that it will keep the demised premises, both as to realty and personally, insured against loss or damage by fire, to the benefit of Lessor, in insurable companies satisfactory to Lessor with a provision in the policy or policies of insurance, making the loss, if any, payable to Lessor. Said insurance shall be in the usual form and cover Lessor to the extent of the full insurable interest of the demised premises. Policies with receipts for premiums for the leased period shall be deposited with Lessor. In the event of any loss or damage by fire, Lessee shall be entitled to receive the amount or amounts of insurance so made payable to Lessor and actually received by it, under the policy or policies, when and as the buildings or other property destroyed by fire have been fully rebuilt or otherwise fully restored or replaced by Lessee.

It is further agreed that in no case shall a waiver by Lessor of any right to take advantage of any breach of condition hereunder be a waiver of any other or further breaches, conditions and failures to perform, and Lessor covenants that Lessee, on paying said rent and performing the conditions and agreements aforesaid shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term thereof. No surrender before the expiration of the demised term shall be valid unless accepted by Lessor in writing.

And also that all the provisions of this lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, or their successors in interest.

In witness whereof, the parties have caused these presents to be signed by their respective officers, and their seals affixed hereto.

In presence of

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By HOWARD COONLEY

Vice President

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Attest

STEPHEN A. BOURNE

[SEAL]

SKINNER & EDDY CORPORATION,
By LOUIS TITUS*Attorney in Fact*

[SEAL]

SKINNER & EDDY CORPORATION,
D. E. SKINNER*President*

Attest

L. B. STEDMAN, *Secy*

UNITED STATES OF AMERICA,

*State of Pennsylvania,**County of Philadelphia, ss.*

On this 17th day of June, A. D. 1918, before me personally appeared Howard Coonley, to me known to be the Vice-President of the Corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

ERVEY LYNDALL

Notary Public

Commission expires at close of next session of Senate

STATE OF ———,

County of ———, ss.

On this 15th day of July, A. D. 1918, before me personally appeared D. E. Skinner, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

BENJ. K. DAVIS

*Notary Public for Washington**Residing at Seattle.*

170

RELATOR'S EXHIBIT G-1.

Form 912-E. F. C.

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. O. 3652

Date: April 9, 1919

To Skinner and Eddy

Please furnish labor and/or material required to do work describe below on steamship "West Maximus" Hull No. 1188, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of Ship Construction Division

Work to be done: Dock vessel and apply one coat of approved antifouling paint to light water line.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid until approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on your bill.

EMERGENCY FLEET CORPORATION

By D. M. CALLIS

Approved

W. A. MAGEE

District Manager

(Original to Contractor.)

(Copy.)

171

RELATOR'S EXHIBIT G-2

Form 912-E. F. C.

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. O. 3651

Date: April 9, 1919

To Skinner & Eddy Corporation

Please furnish labor and/or material required to do work described below on Steamship Edgell, Hull No. 1734, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of ship construction

Work to be done: Dock vessel for inspection.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION,

By D. M. CALLIS

Approved

W. A. MAGEE,

District Manager,

Per CALLIS

(Original to Contractor.)

172

RELATOR'S EXHIBIT G-3

Form 912-E F C

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation.

Completion Order No. C. O. 3657.

Date April 12, 1919.

To Skinner & Eddy Corporation

Please furnish labor and/or material required to do work described below on Steamship Edgell, Hull No. 1734, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of ship construction.

Work to be done: Remove and replace all defective riveting in bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.

By D. M. CALLIS

Approved

W. A. MAGEE,

District Manager

(Original to Contractor.)

Copy.

173

RELATOR'S EXHIBIT G-4

Form 912—E. F. C.

District Northern Pacific

United States Shipping Board, Emergency Fleet Corporation

Completion Order No. C. O. 3726

Date: April 22, 1919.

To Skinner & Eddy Corp.

Please furnish labor and/or material required to do work described below on steamship West Maximus, Hull No. 1188, charging same to United States Shipping Board, Emergency Fleet Corporation at regular rates.

For account of Ship Const.

Work to be done: Remove and replace all defective riveting on bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.

By D. M. CALLIS

BEEBE.

Approved:

W. A. MAGEE,

District Manager.

(Original to Contractor.)

174

RELATOR'S EXHIBIT G-5

Form 912—E. F. C.

District North Pacific

United States Shipping Board, Emergency Fleet Corporation

Completion Order No. C. O. 3728

Date: April 25, 1919.

To Skinner & Eddy

Please furnish labor and/or material required to do work described below on steamship Edgemont, Hull No. 1735, charging same to United States Shipping Board, Emergency Fleet Corporation, regular rates.

For account of Ship Const.

Work to be done: Dock vessel and apply one coat of approved anti-fouling paint to light water line.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D. M. CALLIS
BEEBE

Approved
W. A. MAGEE,
District Manager

(Original to Contractor.)

(Copy.)

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RELATOR'S EXHIBIT G-6

Form 912—E. F. C.

District Northern Pacific

United States Shipping Board, Emergency Fleet Corporation.

Completion Order No. C. O. 3729.

Date: April 26, '19

To Skinner & Eddy

Please furnish labor and/or material required to do work described below on steamship Edgemont, Hull No. 1735, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of Ship Const.

Work to be done: Remove and replace all defective riveting on bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D. M. CALLIS
BEEBE

Approved
W. A. MAGEE,
District Manager
(Original to Contractor.)

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RELATOR'S EXHIBIT G-7

Form 912-E, F. C.
District S. P.

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. O. 4130

Date, 7, 7, 1919

To Skinner & Eddy Corp.

Please furnish labor and or material required to do work described below on Steamship S. S. Ft. Wright, Hull No. 546, charge same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of C. C. Moore, Engineers, Tacoma.

Work to be done: Install a by-pass in the deck steam reduce valve on hull 546, S. S. Ft. Wright.

This is not repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless proved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION

By N. C. WILLEY

Approved

R. L. DYER

Asst. to District Manager

(Original to Contractor.)

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RELATOR'S EXHIBIT G-8

United States Shipping Board Emergency Fleet Corporation,
Division of Construction, North Pacific District

Seattle, Washington, December 29, 1919

Skinner & Eddy Corporation,
Seattle, Washington

GENTLEMEN:

Main Engine S. S. "Agreement"

I. Confirming verbal conversation of December 14th, please arrange to make the necessary repairs to the H. P. Engine, which in general consist of shifting the forward crank web aft approximately 1.16", so that same will not ride after face of #1 Journal.

forward face of the crank pin brass also to be refaced, to give the usual clearance between the web and face of brass.

2 Kindly be governed by the above.

Very truly yours,

D. M. CALLIS,

District Manager,

(Signed)

By WALT B. BEEBE,

Assistant in Charge Ship Construction,

W. B. B. C.

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RELATOR'S EXHIBIT H.

United States Shipping Board, Emergency Fleet Corporation, Philadelphia, Pa.

June 7, 1918.

General Order No. 38.

To District officers, district supervisors, and district auditors for action.

To Other executive officers for information.

Subject: Reimbursement to shipbuilders for increased labor cost—paying off workmen.

Supplementing General Order No. 36 on Reimbursement to Shipbuilders for Increased Cost of Labor.

A. *Authorization for Reimbursement.*

The decisions of the Labor Adjustment Board in certain shipbuilding districts provide that "employees shall be paid on the shipbuilder's time". In general, these rulings follow customs that existed in most of the districts prior to the time the decisions were rendered, in some cases the procedure having been regulated by existing state laws.

While the expense of paying off employees is unappreciable as compared with the magnitude of the work on hand (particularly where, by proper systematizing of method, shipbuilders are able to pay off employees within 10 to 15 minutes per pay roll group) the Corporation will assume, as a maximum, the part of this cost hereinafter specified when claims for reimbursement are prepared in accordance with the following regulations:

179 B. *Claims for Reimbursement.*

Claims against the Corporation for reimbursement of shipbuilders on account of cost of paying off wage labor, engaged on ship construction for the Corporation, shall be limited to the cost of 15 minutes time per workmen per day period, and determined in accordance with the following, provided, however, that where any shipbuilder had been paying off his employees on his own time previous to the decision of the Labor Adjustment Board, no claim for reimbursement shall be accepted, nor payment made.

1. Divide number of wage workers on payroll, indirect as well as direct, by four, to obtain number of hours allowed for paying off, on a basis of a maximum of 15 minutes per employee per day period.

2. Multiply number of hours allowed for paying off by average base wage rate for direct and indirect wage labor in the shipyard, to obtain approximate cost of payroll time, exclusive of wage increases, bonuses, etc., for which claims for reimbursement shall be made separately.

3. Proportion of "2," equivalent to proportion of direct wage labor chargeable to Corporation work during period, will be the amount of paying off cost assumed by the Corporation.

Method of Preparing Claims for Reimbursement

Claims for reimbursement to shipbuilders on account of expense incurred in paying off direct wage labor engaged on Corporation work must be made independently of any other claims for reimbursement and should cover a single pay period. All claims shall be made in accordance with the regulations included herein, shall be prepared on standard voucher forms of the Corporation, and must show on the face thereof or on supporting papers the following information:

1. Inclusive Dates of Pay Period Covered.
2. Certification by District Officer or District Supervisor, and Audit Approval by the District Auditor.
3. Calculation of Amount Due, as outlined in Section B.

EMERGENCY FLEET
CORPORATION.
CHARLES PIEZ,

Vice President

(Signed)

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RELATOR'S EXHIBIT K 7

Western Union Telegram.

Dy Philadelphia, Penn., 747P, 18

Skinner and Eddy Corp.,
Seattle, Wash.

You are hereby directed to immediately suspend all work upon twenty-five of the vessels covered by contracts three two four and four four seven. Stop. District Manager Blain will designate all numbers you will be guided accordingly. Stop. Order all work stopped on commitments made by you as to hulls designated by Blain and make no further commitments or expenditures as to them. Stop. Details follow by letter.

UNITED STATES SHIPPING
BOARD EMERGENCY FLEET
CORP.

CHARLES PIEZ,

Director General.

RELATOR'S EXHIBIT K-2.

United States Shipping Board, Emergency Fleet Corporation,
Philadelphia, Pa.

April 25, 1919.

The Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

You are directed to proceed to cancel without delay all work on entry-five of the vessels covered by Contracts 324 and 447, on which suspension telegram was issued on February 18th, 1919, in continuation of which telegram a letter was sent you on February 21, 1919.

You are also directed to suspend work upon and cancel all subcontracts covering the above named work.

You will please carry out these instructions with the understanding that such action on your part as to said subcontractors shall be without prejudice to your rights under your contracts with us, and we shall hold you harmless against any loss or expense, either direct or indirect, resulting from such action by you in canceling the contracts with subcontractors, including claims made by subcontractors on account of wholly or partly canceled orders, claims for attorneys' fees, or suits brought or threatened.

This agreement on our part is made, however, on condition that you will submit for our approval all settlements, commitments and liabilities before the same are made or acknowledged by you.

Very truly yours,

(Signed)

CHARLES FIEZ,

Director General.

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Demurrer to Plea and Traverse

Filed January 28, 1925.

• • • • •

Now comes the respondent, J. R. McCarl, Comptroller General of the United States, and says that the petitioner's plea and traverse is bad in substance.

PEYTON GORDON,

United States Attorney.

JOHN M. LEWIS,

Attorneys for Respondent.

Note.

Among the points of law to be argued in favor of the foregoing demurrer are

1. That it affirmatively appears, from the said plea and traverse, that the claim of petitioner referred to therein is not such a claim as the respondent has jurisdiction to settle and adjust.

2. And for other defects apparent on the face of the record.

Order Sustaining Demurrer to Plea and Traverse.

Filed March 17, 1925.

* * * * *

This cause came on to be heard at this term upon the demurrer of the respondent, J. R. McCarl, Comptroller General of the United States to the plea and traverse of the relator, and thereupon, upon consideration thereof, it is, by the court, this 17th day of March, 1925,

Ordered and adjudged that the said demurrer of the respondent to the plea and traverse of the said relator be, and the same hereby is, sustained, and the relator having elected to stand on said plea and traverse, it is further

Ordered that the petition for mandamus filed herein be, and the same hereby is, dismissed.

From the foregoing order the said relator, Skinner and Eddy Corporation, by its attorney, in open court, notes an appeal to the Court of Appeals of the District of Columbia, and the amount of the undertaking for costs on appeal is hereby fixed at one hundred dollars (\$100.00), or in lieu thereof, the relator may deposit in the office of the clerk of this court the sum of Fifty Dollars in cash.

WENDELL P. STAFFORD

Justice.

O. K.

VERNON E. WEST

Asst U. S. Attorney.

Memorandum

March 17, 1925 — \$50 deposited in lieu of bond on appeal.

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Assignments of Error

Filed March 17, 1925.

* * * * *

The relator, Skinner and Eddy Corporation, assigns the following as errors committed by the court in the above-entitled cause, namely:

1. The court erred in overruling relator's demurrer to the answer of respondent.

2. The court erred in sustaining the demurrer of respondent to relator's plea and traverse and in dismissing relator's petition for writ of mandamus.

3. The court erred in holding that the respondent did not have jurisdiction to pass on the claims presented to him by relator on September 4, 1924.

4. The court erred in refusing to issue a writ of mandamus to the respondent requiring him to consider and act upon the claims of relator presented to the said respondent on September 4, 1924.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.,
Attorneys for Relator.

Service of a copy of the foregoing assignments of error acknowledged this 17th day of March, 1925.

VERNON E. WEST,
Asst U. S. Attorney, Attorney for Respondent.

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Designation of Record.

Filed March 17, 1925

* * * * *

The Clerk of the Court will please include in the record on appeal to the Court of Appeals in the above-entitled cause the following:

1. Original petition for writ of mandamus, with all exhibits thereto attached.

2. The answer of respondent to said petition, together with the exhibits thereto attached.

3. The demurrer of the relator, Skinner and Eddy Corporation, to the answer of the respondent.

4. The order of court dated January 6, 1925, overruling said demurrer.

5. The plea and traverse of relator to the answer of respondent, with the exhibits thereto attached.

6. The demurrer of the respondent to said plea and traverse.

7. The order of court entered herein on the 17th day of March, 1925, sustaining said demurrer and dismissing relator's petition.

8. Notation of appeal in open court.

9. Notation of deposit of money in lieu of bond on appeal, with the Clerk of the Supreme Court of the District of Columbia.

10. Assignment of errors.

11. This designation.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.,
Attorneys for Relator.

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Service of a copy of the foregoing designation of record acknowledged this 17th day of March, 1925.

VERNON E. WEST,
Asst U. S. Attorney, Attorney for Respondent.

186 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss.

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 185, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 69405 at Law, wherein United States of America, ex relatione Skinner and Eddy Corporation, a Corporation, is Petitioner and J. R. McCart, Comptroller General of the United States is Respondent, as the said remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of June, 1925.

(Seal of the Supreme Court of the District of Columbia.)

MORGAN H. BEACH

Clerk.

EW.

Endorsed on cover: District of Columbia Supreme Court. No. 4345. United States of America ex relatione Skinner and Eddy Corporation, a corp., appellant, vs. J. R. McCart, Comptroller General of the United States. Court of Appeals, District of Columbia. Filed Jun. 17, 1925. Henry W. Hodges, clerk.

Petition for rehearing, covering 13 pages, filed November 17, 1925, omitted from this print. It was denied and nothing more by order November 21, 1925.

Minute entry of argument of cause omitted in printing.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

(Before Martin, Chief Justice, and Robb and Van Orsdel,
Associate Justices)

OPINION

Mr. Justice Robb delivered the opinion of the Court:

Appeal from a judgment dismissing a petition for mandamus to compel appellee to pass upon a claim of appellant growing out of contracts between the U. S. Shipping Board Emergency Fleet Corporation and the Skinner and Eddy Corporation.

There now is pending in the U. S. District Court for the Western District of Washington a suit instituted by the Skinner & Eddy Corporation against the Emergency Fleet Corporation and based upon the above contracts.

The Emergency Fleet Corporation made what purported to be a general assignment to the United States. Thereupon the United States as assignee, instituted suit in the U. S. District Court for the Western District of Washington on claims growing out of the same contracts involved in the suit filed by the Skinner & Eddy Corporation.

Prior to the assignment of these contracts to the United States, the Comptroller General had ruled that claims thereunder by the Skinner & Eddy Corporation were not claims against the United States but claims against the Emergency Fleet Corporation. After the assignment by the Emergency Fleet Corporation, and as stated by the Skinner & Eddy Corporation in anticipation of the bringing of the suit which the United States subsequently filed, the jurisdiction of the Comptroller General again was sought to be invoked, and denied.

Appellant maintains that the status of the Emergency Fleet Corporation has been definitely determined by the Supreme Court of the United States to be that of a private business corporation having a distinct entity and not entitled to the immunity of the sovereign, and hence that it may be sued as any other private corporation for its torts or upon its contracts. In support of this contention are cited *U. S. vs. Strang*, 254 U. S. 491, and *Sloan Shipyard Corp. vs. U. S. E. F. C.*, 258 U. S. 549. Those decisions apparently fully sustain this contention. Appellant further contends that the assignment of these contracts to the United States has no greater efficacy than the assignment to an individual, and cites *U. S. vs. Buford*, 3 Pet. 12, 30. Certainly this is the general rule. In 5 C. J. 936 it is said: "So the assignee takes the chose subject to all equities and defenses between the assignor and the debtor existing at the time of the assignment, to all counterclaims against the assignor then held by the debtor, and to arrangements made between the debtor and the assignor prior to the time when the debtor receives notice of the assignment." See, also, *The Siren*, 7 Wall. 152, 154, and *Rolling Mill Co. vs. Ore & Steel Co.*, 152 U. S. 596. Under the view we take of the case, however, it is unnecessary to determine these questions.

It is manifest that there are pending in a court of competent jurisdiction two suits involving the contracts upon which the claims submitted to the Comptroller General are based. If, as suggested by appellant, that court should be of opinion that the assignment to the United States was subject to all existing equities and that the claim here involved is not in law a claim against the United States, notwithstanding the assignment, then there would be no necessity for the writ. But, whatever may be the decision of that court, it having acquired jurisdiction of the subject matter of this case, no court of co-ordinate authority is at liberty to interfere with its action. This principle is so familiar as to require no citation of authorities.

It results that the judgment below was right and must be affirmed.

Affirmed.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

JUDGMENT—November 2, 1925

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Robb.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—November 21, 1925

On consideration of the motion for a rehearing in the above entitled cause, it is ordered by the Court that said motion be and the same is hereby denied.

Clerk's certificate to foregoing papers omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 18, 1926

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 31,570. District of Columbia Court of Appeals. Term No. 847. The United States ex rel. Skinner and Eddy Corporation, petitioner, vs. J. R. McCarl, Comptroller General of the United States. Petition for writ of certiorari and exhibit thereto, with notice of filing and proof of service of petition, brief, and record. Filed December 18th, 1925. File No. 31,570.

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